

DAY 11

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA *
*
V *
*
BRIAN FOLKS * CRIMINAL FILE NO. 16-94

JURY TRIAL
Thursday, May 9, 2019
Burlington, Vermont

BEFORE:

THE HONORABLE WILLIAM K. SESSIONS III
District Judge

APPEARANCES:

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1 THURSDAY, MAY 9, 2019

2 (The following was held in chambers at 8:35 a.m.)

3 THE COURT: So we are in a charge conference.

4 I indicated to all lawyers present that I was not
5 going to put a copy of the indictment in because it's
6 included within the jury charge.

7 The buyer-seller instruction was added because
8 clearly there was testimony from the defendant that he
9 had a buyer/seller relationship with McFarlan.

10 The opportunity to observe is highlighted because
11 the -- the knowledge of age and the reckless disregard
12 is struck.

13 Defendant not testify, I have removed that.

14 Okay. So let's see, the first objection is? From
15 the defense?

16 MS. SEN: And this is regarding the
17 instruction for on or about or in or about where it
18 instructs that the government needs to prove that the
19 offense was committed precisely on the date charged.

20 My concern is with Count 15. I think the only
21 evidence that the person who's charged as a minor was
22 under the age of 18 is actually on those dates. I don't
23 know that there's any other evidence in the record
24 that's come in related to her age beyond that.

25 And everything else -- my understanding is

1 everything else involving her, and what's been coming in
2 as evidence regarding her, is related to a later time
3 period when she was, in fact, above 18, so I feel like
4 that count -- the government -- it would -- the jury
5 would have to find that it occurred on that particular
6 date because the evidence is tied to that.

7 THE COURT: It's on or about that date.
8 That's the confusing part.

9 MS. SEN: True.

10 THE COURT: You have to instruct that it has
11 to be on or about that date. What you are asking for is
12 a supplemental instruction that, in regard to her being
13 a minor, it involved -- the activities that she was
14 engaged in -- or the defendant was engaged in with
15 relationship to her is only significant up until the
16 date of her turning 18, which is in November of 2013.
17 That's what you are asking for as a supplemental
18 instruction. Because on or about is a standard
19 instruction.

20 MS. SEN: No. I understand that.

21 THE COURT: They got the date wrong by a day;
22 that's meaningless.

23 MS. SEN: Well, given the nature of the
24 evidence and the way it's come in regarding her
25 activities, I just -- I mean, I think on or about is

1 fine. I just don't know whether there's some way to --
2 to maybe reemphasize within the specific instruction
3 itself that this does -- this is tied to the date.

4 THE COURT: I think that you can certainly
5 bring that up in summation. The problem is, of course,
6 that I -- if I get into the --

7 MS. SEN: No. I understand.

8 THE COURT: -- the facts, I run the risk of
9 trying to persuade them or taking a position one way or
10 another; and the other objection, of course, which was
11 made to on or about, is that they had asked for an
12 instruction on continuing offense. I went back to the
13 indictment. There's no mention of continuing offense
14 there. I don't know where -- in your memo, you said
15 there's a mention of continuing offense. I didn't see
16 it anywhere. So as a result, it seems to me that I'd be
17 talking about your summation, which I don't think I
18 should be. So I also think you're not prejudiced by
19 that.

20 Okay. So I don't think I can do anything about
21 that.

22 MS. SEN: I understand that, your Honor.

23 THE COURT: What else do you have?

24 MS. SEN: I think that we had both talked
25 about -- in Count 16 where the Court goes through in

1 great detail the Vermont Statutes, we were wondering
2 whether there was a way -- or whether the Court would
3 consider perhaps short-circuiting that a little bit.

4 THE COURT: It's -- and just say prostitution?
5 Vermont law declares the prostitution illegal?

6 MS. SEN: And just defining, as you do here,
7 prostitution.

8 MS. SAVNER: Yeah. I mean, one option would
9 be to just include numbers eight and nine on page 36.
10 So Vermont law -- and I don't know that we need to cite
11 Vermont statute, but Vermont law makes it unlawful to
12 engage -- and I think we can drop "lewdness," given that
13 the definition is so circular, but engage in
14 prostitution or assignation or aid or abet prostitution
15 or assignation by any means whatsoever, and then include
16 the definitions of prostitution and assignation.

17 THE COURT: Okay. Do you agree with that?

18 MS. SEN: I think that would be fine,
19 your Honor.

20 THE COURT: Okay. Let's change it that way.

21 MS. SEN: And I take out the next set of
22 Vermont Statutes.

23 THE COURT: Yes.

24 Okay. Anything else?

25 MS. SEN: I think that's all I had,

1 your Honor.

2 THE COURT: Okay.

3 MS. SAVNER: Well, one just housekeeping issue
4 to the extent it matters. Hannah does have an H at the
5 end of her name.

6 THE COURT: That's very interesting because it
7 just was rotating back and forth, and the reason I am
8 sensitive to that is that my oldest child is named
9 Hannah.

10 MS. SAVNER: With an H.

11 THE COURT: With an H. And I found this
12 without an H to be very -- I don't know.

13 MS. SAVNER: Yeah. I believe that came out
14 because that's how she is identified in some of the
15 files on the defendant's computer, but the name on the
16 birth certificate is Hannah with an H on the end.

17 THE COURT: We could actually change that
18 quickly?

19 LAW CLERK: Yes.

20 THE COURT: Okay.

21 MS. SAVNER: And with respect to Count 15 --
22 so I understand, based on the conversation yesterday,
23 that your Honor remove -- removed "knowing and in
24 reckless disregard." However, that phrase in the
25 charging language I think modifies not only the age

1 component but also the "would be caused to engage in a
2 commercial sex act." So -- I mean, there's -- the
3 second element is related to knowledge of the age.

4 THE COURT: Yes.

5 MS. SAVNER: And we are agreeing that
6 reasonable opportunity to observe is right there, but if
7 you look at the third element, the -- and in the charge
8 it says the defendant knew or recklessly disregarded the
9 fact that Hannah A. would be caused to engage in a
10 commercial sex act.

11 THE COURT: Yes.

12 MS. SAVNER: And we believe that is still
13 proper, but the way the charged language has been
14 amended, reference to reckless disregard has been
15 entirely removed. So I think it should be --

16 THE COURT: So the definition of reckless --
17 in reckless disregard -- it should be included within
18 the element, which -- the third element, which it is,
19 isn't it?

20 MS. SAVNER: Yes, it is. I just think it
21 should be put back in the charging language at the top.

22 THE COURT: Oh, all right. I think that both
23 should be -- the knowledge and -- and then we should
24 say, you know, the government is proceeding only on this
25 last theory because the opportunity to observe unto

1 itself is just -- if it's unrelated to knowledge of her
2 age, it just seems crazy.

3 MS. SAVNER: So I did have another -- another
4 amendment to propose related to the second element.

5 So I believe that the jury still needs to find that
6 Hannah was, in fact, under the age of 18, which is not
7 sort of listed out in the elements. So my suggestion
8 would be the second element be amended to say "Second,
9 that Hannah A. was under the age of 18 and the defendant
10 had a reasonable opportunity to observe her" and that
11 gets -- that sort of explains what that element is.

12 THE COURT: Right. Well, that helps,
13 actually. Right.

14 MS. SEN: Right. I think that makes sense.

15 THE COURT: Yes. Okay.

16 You got that?

17 LAW CLERK: Got that.

18 MS. SEN: So that would go under -- on page 33
19 under the second element.

20 LAW CLERK: And on page 32.

21 MS. SEN: Yes.

22 THE COURT: And I think it also goes in the
23 questionnaire -- the jury verdict form.

24 MS. SEN: Oh, the special verdict form.

25 THE COURT: Okay?

1 MS. SAVNER: That was it for the government.

2 THE COURT: That it for you?

3 MS. SEN: Yes, your Honor.

4 THE COURT: Okay. We will start in 15
5 minutes.

6 (Chambers conference concluded at 8:45 a.m.)

7 (The following was held in open court with the jury
8 present at 9:05 a.m.)

9 THE COURT: Good morning.

10 COURTROOM DEPUTY: This is case number 16-94,
11 United States of America versus Brian Folks. The
12 government is present through Assistant United States
13 Attorneys William Darrow, Emily Savner and Matthew
14 Grady. The defendant is present in the courtroom with
15 his attorneys, Mark Kaplan and Natasha Sen.

16 The matter before the Court is trial by jury day
17 11.

18 THE COURT: Good morning and welcome again.

19 Has anyone spoken to you about the case, have you
20 learned anything about this case from outside of the
21 courtroom or have you communicated among yourselves
22 about the merits of this case?

23 (The jury all indicate in the negative.)

24 THE COURT: Okay. I have noticed that as the
25 days go on your responses become more vocal, which must

1 mean that you feel more comfortable, because now we get
2 "no, your Honor."

3 Okay, I think we are ready to go for summations and
4 turn first to the government.

5 Mr. Grady.

6 MR. GRADY: Yes. Thank you, your Honor.

7 Over the last three weeks you have heard about
8 buns, sleeves, and dope sickness. You have heard about
9 beatings, rapes, and threats to violate. You have heard
10 about BB gun shots, the Walnut Challenge and, to use the
11 defendant's own words, peeing on bitches.

12 In short, you have heard about a dark and
13 disturbing world where the defendant controlled and
14 manipulated women to peddle drugs and sex here in the
15 greater Burlington area. His control and manipulation
16 was a product of two factors: one, targeting society's
17 most vulnerable members and, two, using tactics to
18 exploit those vulnerabilities.

19 By now, you know the defendant wasn't over here on
20 campus recruiting women or seeking women from safe,
21 secure, loving homes. No, he was seeking women who had
22 fallen down, women that had been abused and neglected,
23 homeless and addicted.

24 Now, this case isn't about them falling down or
25 making mistakes or making some bad decisions. It's

1 about the defendant intentionally coming across them
2 when they are down and out, keeping them down and out,
3 and treating them like trash so they would do what he
4 wanted all so he could line his own pockets with money.

5 Probably some of the most remarkable -- the most
6 remarkable part of this case is, no matter who was on
7 the stand, you saw a pattern emerge, a pattern of the
8 vulnerability and different tactics the defendant used
9 to exploit those vulnerabilities.

10 First, think about the size. All the women who
11 appeared in front of you were small in size and stature
12 as opposed to the defendant, the self-proclaimed fighter
13 who was twice the size that he is now, as he told you
14 yesterday.

15 Think about the different vulnerabilities that they
16 had. All the women either had education levels that --
17 didn't finish high school, came from broken homes, DCF
18 custody, some sort of issue. Many were homeless, and
19 some were in debt, and what tactics would the defendant
20 use?

21 You heard that he would sometimes tell people that
22 he loved them, he generally cared about them, and he
23 would take care of them. But over time, he showed his
24 true colors come out with various tactics.

25 Many of the women had addictions, addictions to

1 heroin, which you know now is a Schedule I controlled
2 substance because of its addictive properties and
3 because it does not have recognized medical use that
4 outweighs its addictive properties.

5 We heard a lot about violating: If you disrespect
6 the defendant, there's going to be consequences and
7 repercussions to deal with later.

8 Humiliation: You heard about red aprons, BB guns,
9 the Walnut Challenge, peeing on women, all acts meant to
10 degrade and humiliate women, ultimately to control them.

11 You heard a lot about sexual violence, unwanted
12 oral, vaginal, anal sex.

13 And, finally, physical violence, to let them know
14 that you do not become -- you do not come in between the
15 defendant and his drugs or his money.

16 Now, of course the defendant didn't maybe use all
17 these tactics with each and every one of them. And as
18 you think about it, it takes a lot of time, effort and
19 resources to put a gun to someone's head 24/7. Instead,
20 you are going to use the least amount of tactics
21 necessary so you can control more women and ultimately
22 obtain more profits you put into your hand.

23 So keep that in mind when you go back to deliberate
24 about the remarkable similarity of all the government
25 witnesses who described these vulnerabilities and the

1 tactics the defendant used.

2 Now, because of the defendant's conduct, he faces
3 14 counts. The government has divided those 14 counts
4 into four categories. As you can see, the large
5 categories relate to sex trafficking and drug
6 trafficking. And sex trafficking, you will notice,
7 there are five counts. Those relate to what's called
8 adult sex trafficking, and there's one count dealing
9 with minor sex trafficking of Hannah.

10 You will also see there are six counts relating to
11 drug trafficking, one of them being conspiracy, four for
12 the controlled buys of heroin, and one for the traffic
13 stop where heroin and cocaine was found. And what we
14 are going to do this morning is walk through the
15 elements of each and every count so you confirm what you
16 already know: The defendant is guilty beyond a
17 reasonable doubt.

18 Now, first we are going to talk about sex
19 trafficking. This is the first category. And as a
20 reminder, the adult victims are Katelynn, Keisha,
21 Danielle and Ayla, and then Hannah is off to the side
22 because she is the count related to minor sex
23 trafficking.

24 And one note to keep in mind about the dates that
25 you will see involving these counts, it's a broad date

1 range, and the government only needs to show that it
2 occurred on one day at one time within that date range.
3 It obviously can't be outside the date range, but it
4 only needs to be one particular time within the date
5 range.

6 So first, here are the elements of sex trafficking.
7 And you don't need to write them down because the judge
8 is going to provide you these in his instructions, and
9 you will have a written copy when you go back to
10 deliberate. But let's talk about the elements. We are
11 going to focus on the first and third one at this time,
12 because certainly those there's no question about.

13 The first element is recruiting, enticing,
14 harboring, transporting, providing, obtaining or
15 maintaining. Just think about that for a couple of
16 minutes.

17 As far as harboring, there's no doubt the defendant
18 gave his women places to stay or rented hotel rooms for
19 them to stay.

20 As far as transporting, you heard evidence that he
21 would drive them to out calls.

22 As far as providing, you heard about how he posted
23 Backpage ads for them to obtain clients.

24 And as far as maintaining, you heard about the
25 defendant would provide drugs, specifically heroin, to

1 help with them. So you can check the first element off
2 right now.

3 We are going to go through the second element with
4 each and every woman to show how force, threats
5 of force, fraud, coercion and any combination was used
6 against each particular victim.

7 And as to the third element, you can check that off
8 right now as well, interstate commerce, because
9 interstate commerce includes things such as telephones,
10 the internet, hotels; and you certainly have multiple
11 evidence of that. For example, you saw the YouTube
12 video of Katelynn. That is certainly the internet. And
13 you heard how Backpage was used. That is certainly the
14 internet.

15 You also heard about drugs coming from New York,
16 out of state, where the defendant used part of his
17 scheme to keep the women connected to him.

18 So you can certainly go ahead and check the first
19 and third elements of sex trafficking right now.

20 So we are going to focus a little bit more on the
21 second element. The second element, coercion, involves
22 this concept of serious harm, and this is an
23 important concept to think -- to keep in mind. And,
24 again, you will have the jury instruction that will
25 explain this as well.

1 But serious harm goes beyond just physical harm.
2 It includes not just physical harm, and you have some
3 examples there of financial harm, reputational harm, and
4 psychological harm.

5 The other thing to keep in mind is that you will
6 notice that you consider it from the reasonable person
7 of the same background and same circumstances as the
8 victims. So, again, you are not looking at it from the
9 perspective of anybody in this room who has a stable job
10 and has a place to go home tonight to sleep. You are
11 looking at it from the background of a person in their
12 shoes at that moment, which is why we are going to spend
13 some time talking about the background of the charged
14 victim.

15 So let's first talk about Katelynn. Remember,
16 Katelynn testified that she dropped out of school in
17 eighth grade. She bounced around DCF custody. She was
18 sexually assaulted when she was 13 years old. She spent
19 some time being homeless. And that when she was 16, 17
20 years old, she walked around with two pillow cases full
21 of all of her belongings, including her birth
22 certificate. Those are the circumstances Katelynn was
23 in when the defendant came across her. Let's talk about
24 the ways that he coerced her.

25 First of all, she told you about all of the false

1 things that he said to her, and she testified, looking
2 back, she got played by the defendant because he didn't
3 mean any of these promises of loving her and taking care
4 of her.

5 She also talked about what her size was relative to
6 the defendant back in this time period. She testified
7 about the firearm the defendant had and that at one time
8 the defendant took the firearm out and put it to her
9 head, and you will remember she testified that was a low
10 point in her life. She didn't care if she lived or died
11 in that moment.

12 She told you also about the firearm the defendant
13 pulled on C-Rock and how that, in her mind, was scary.
14 She talked about -- about the concept that you violate
15 the defendant, he is going to violate back, and that she
16 better not get mouthy or he will get physical. And of
17 course he did get physical at times.

18 She told you about the time that he grabbed her
19 face and how it scared her and how she started to cry.
20 She also talked about the time when he punched her in
21 the butt.

22 Now, not only was the defendant physical against
23 Katelynn, he was also physical against others, what's
24 considered a climate of fear. She talked about the time
25 that she saw the defendant take Jasmine, wrap her by her

1 hair, and whip her around. She talked about the time
2 that the defendant chased down Jasmine, all because she
3 had the audacity to leave. And finally, she talked
4 about the ways the defendant manipulated her with
5 cocaine. She talked -- testified about an incident
6 where the defendant required her to give him oral sex,
7 and then he would give her cocaine. And, of course, she
8 performed the oral sex, and he didn't give her the
9 cocaine. Why? As a way to show and reinforce that evil
10 control, when she gets what he allows her to get when he
11 decides it's time to do so.

12 And you heard a lot about the time where she got so
13 skinny, the defendant prevented her from using cocaine.
14 Now, is that because the defendant is some nice guy and
15 really concerned about her well-being? Of course not.
16 He wants her to put on some weight, because she's a
17 commodity that he wants to sell over and over again to
18 the highest bidder and line his pockets full of money.
19 Ultimately, Katelynn told you that she never said no
20 because she was scared.

21 Now, how do you know that what Katelynn told you
22 was true? Think about what Jasmine told you. Jasmine
23 came and testified that -- let me remind you about
24 Jasmine. She doesn't even live in Burlington anymore.
25 She came from out of state. It's not like Jasmine and

1 Katelynn are best of friends. Jasmine didn't even know
2 Katelynn's name. She just knew her as Pinky. So it's
3 not like they came in here and concocted a story and got
4 on the same page.

5 And another thing about credibility: Think about
6 the demeanor of the women when they testified before you
7 and how they were crying during some of these traumatic
8 events that they recounted. Contrast that with the
9 demeanor of the defendant yesterday, who was pretty glib
10 when he testified. Also, who's been thinking about
11 their day in court for years? The defendant. Who heard
12 all the testimony before he testified and could
13 incorporate that into his testimony? The defendant.
14 Who, at this point in time, has the greatest incentive
15 to lie? The defendant.

16 So going back to Jasmine. Jasmine gave you similar
17 account of how she saw the defendant violate against
18 Katelynn. She talked about the time the defendant did
19 grab her by her hair and yank her around and about the
20 time he tried to chase her down when she tried to leave.

21 Jasmine corroborates Katelynn's account, and that's
22 why you can be confident beyond a reasonable doubt that
23 the defendant coerced Katelynn. Let's turn next to
24 Keisha.

25 Now, Keisha involves two time periods, and again,

1 you just have to find at one -- some point in between,
2 in these time periods, that she was coerced. We're
3 first going to cover the first time period in 2013.

4 Now, it's not very long, but if you remember
5 carefully as to what Keisha testified to, you will
6 remember that she -- in order to get heroin, in order to
7 get well, she would first have to see a client; then the
8 defendant would provide heroin.

9 She also testified that the defendant had sex with
10 her, not because this was some sort of loving
11 relationship. Keisha testified it was because of
12 control. You know that the defendant has to assert his
13 control and his dominance and to let the women know that
14 they're just property, whether they want to or not.
15 Let's talk about the second time period.

16 Keisha testified that she was homeless when she
17 came out of the Valley Vista rehab facility. Who was
18 there? Who was nice enough to pick her up? It was the
19 defendant. And within 24 hours, he brings her to the
20 hotel and is posting her on Backpage and feeding her
21 drugs.

22 Keisha testified that heroin was her biggest
23 problem, and that's what kept her coming back to the
24 defendant. She also told you a lot about psychological
25 control. Remember, she had to participate in the Walnut

1 Challenge, which of course the defendant said couldn't
2 even use that footage because it looked like she was
3 being raped.

4 She also talked about how the defendant urinated on
5 her, again, the ultimate sign of disrespect and control
6 in ownership of somebody.

7 Talked about reputational harm. She testified
8 about that picture she received of Hannah performing
9 oral sex on the defendant. What was her response? She
10 testified that she was in fear, in fear because she knew
11 the defendant had lots of pictures of her that he could
12 send to anybody else.

13 And, finally, she talked about sexual violence that
14 occurred against her.

15 Now, how can you be confident what Keisha testified
16 to? Remember the corroboration for these incidences
17 starting with the sexual violence.

18 You heard a lot of testimony about Keisha stealing
19 or robbing, taking five bundles of heroin from Chrissy.
20 The street value was \$50. What happened? The defendant
21 put a bounty out on Keisha ranging from 100 to \$200.

22 Remember, Lori Crawford even told you about that.
23 About within five minutes, Hannah had found Keisha and
24 contacted the defendant, and Lori brings the defendant
25 to where Keisha was, and Keisha was there being held by

1 two guys.

2 What happened next? Keisha talked about --
3 testified to how the defendant brought her to this
4 dumpster, how it was dark out, she was scared, she
5 didn't know what was going to happen. She didn't know
6 if the defendant was going to hurt her. What did he do?
7 He bent her over behind that dumpster and had sex with
8 her even though she didn't want to. And afterwards, he
9 told her that she's going to post up and that she owes
10 him money because that was his money he [sic] took from
11 Chrissy.

12 How do you know that the defendant peed on Keisha?
13 Again, he told you in his own words. We don't need to
14 play this video again, but when you think back about the
15 video, remember what the defendant says? "I'm going to
16 see how far I can go, how far I can go to show that I
17 own and control women."

18 You also saw 126C, which is a part of the video of
19 the defendant actually peeing on Keisha. We don't need
20 to show that picture to you right now. It was a picture
21 how the defendant sees Keisha as trash, but she's not.
22 She's a human being.

23 And while we are on the topic, you heard a lot from
24 Mr. Martino, the defense computer expert, who probably
25 went on for hours and hours because of his trial fees

1 being a lot higher than his consultation fee, but
2 ultimately what does he say? Pictures were on the
3 defendant's hard drive. There's no doubt about that.
4 And how did he know? And how can you believe Keisha
5 when she testified that she was part of the Walnut
6 Challenge? Once again, you have the defendant's own
7 words.

8 (A digital recording was played in open
9 court.)

10 MR. GRADY: How else is Keisha's account
11 corroborated? She told you about that picture you have
12 received. And you have seen that picture of Hannah
13 performing oral sex on the defendant and the impact that
14 that had on her.

15 Let's think back again to the definition of serious
16 harm that you saw very early on in the slides. How can
17 you prove reputational harm? How, for Keisha, knowing
18 that the defendant has a large stock of pictures, and
19 her fear that those are sent to someone else, of course
20 that's going to have an impact on her and going to want
21 her to stay in the defendant's good graces so she --
22 what happened to Hannah does not happen to her.

23 Let's talk next about Danielle. Danielle probably
24 had one of the most heart-breaking backgrounds of any
25 person you can imagine. She testifies to the neglect by

1 her parents, how they were drug addicts, how she was
2 sexually abused growing up, how she bounced around from
3 foster home to foster home, and how ultimately she cut
4 herself, and she came down from the stand, and she
5 showed you her arms, keeping in mind that it's been four
6 years since she last cut, so they were in a little bit
7 worse shape four years ago.

8 What did Danielle testify to? Again, she testified
9 that she was, at the most, a hundred pounds soaking wet.
10 And in comparison to the defendant, she was much -- much
11 smaller. She talked about that first day when she
12 realized what was going to happen. She turned around to
13 leave, and she saw the defendant with the firearm as he
14 moved up his shirt.

15 The defendant *[sic]* also talked about stabbing
16 someone and the impact it had on her and that she was
17 scared. She talked about the time that Keisha violated
18 a rule and talked to a previous client. She testified
19 how the defendant was upset, in Keisha's face, yelling
20 and screaming at Keisha, and that was scary for Danielle
21 and had an impact on her.

22 She testified to the three times the defendant had
23 sex with her and she did not want to. And finally, she
24 told you all of the possible physical and nonphysical
25 symptoms associated with heroin withdrawal, probably

1 even more so than Dr. Higgins was able to tell you
2 about. And, again, when you think back to that
3 definition of serious harm, how it included physical and
4 nonphysical harm, for a heroin addict going through
5 withdrawal, Dr. Higgins told you about that immediate
6 relief button. You push that button, you inject that
7 drug, and you will feel better.

8 Of course the defendant knows that with his
9 background in opioids, and so he knows that -- to tell
10 Danielle, "Go see a client first, and then I will give
11 you access to that immediate relief button."

12 How has Danielle been corroborated? How can you
13 believe Danielle? Well, she told you that the defendant
14 took her to the North Star Hotel, and you saw records of
15 Mandy renting rooms at the North Star Hotel, and Mandy
16 told you about seeing Danielle, and she told you also
17 that Danielle asked if there was any way to make the
18 anal sex of the defendant less painful.

19 You saw pictures, pictures uploaded to the
20 defendant's Facebook account that week, and you heard
21 from Ms. Epp that this occurred at the North Star Hotel,
22 based upon the bedspread and the background.

23 How else has Danielle been corroborated? She told
24 you that "next we went to the Ho Hum Hotel," and the
25 government introduced records from the Ho Hum showing

1 that Mandy did indeed rent the hotel.

2 Same with the Motel 6. Danielle testified that she
3 overdosed on June 20th, but they're at the Motel 6
4 before that, and again hotel records support that and
5 also pictures support that as well, pictures found in
6 the defendant's Facebook account, and you all -- you
7 know by now that that certainly is the Motel 6 in
8 Colchester because of its distinctive background with
9 the orange bedspread and the orange colors on the wall.

10 Even the Facebook exchanges corroborate Danielle,
11 because what does the defendant talk about? He talks
12 about debt distress. Again, Danielle testified that
13 that's what began this all is her debt distress. So
14 Danielle's account has been corroborated, and you can
15 believe her beyond a reasonable doubt.

16 Finally, there's Ayla. Ayla testified that she
17 dropped out in high school when she became pregnant with
18 her son and that she ultimately developed a very bad
19 heroin addiction, in fact, probably had the worst heroin
20 addiction of all the witnesses in this case because you
21 heard about her physical appearance deteriorating over
22 time. And she told you that her heroin use increased as
23 she lost custody of her son. She ultimately lost her
24 job; her boyfriend, Brad, lost his job; and that she was
25 homeless and living in a truck, and she encountered the

1 defendant.

2 And what's the defendant do? First, he threatens
3 to kick her out. Remember Ayla testifying that part of
4 the reason that she stayed in line with the defendant's
5 rules is because -- that it, to use her words, "sucked"
6 being kicked out and having to sleep across the street
7 at the school on the steps. So, again, thinking back to
8 the definition of serious harm, it's not necessarily
9 serious harm for any of us in this room who have a place
10 to sleep tonight, but for Ayla, a homeless heroin
11 addict, the threat that if you don't do something, you
12 are getting kicked out to the street, certainly
13 coercive.

14 Talked at length about heroin withholding. She
15 does not have the access to that immediate relief button
16 until after she goes, sees a date. First she sees a
17 date; then the defendant will give her access to heroin.

18 She talked about physical force the defendant did.
19 You will remember the time the defendant took her at
20 Lori's house and stuffed her in the bathroom, all
21 because he didn't like the fact that Brad was still
22 hanging around.

23 She talked about the other people that she saw the
24 defendant get violent with, including Victoria. And the
25 reason that he got violent with Victoria is that --

1 because Ayla was paying off Victoria's debt. You don't
2 come in between the defendant and his money. Ayla was
3 his property, and his money. And if someone interferes,
4 that's when violence comes out.

5 She told you about the psychological impact the
6 Walnut Challenge had on her. She testified that it was
7 humiliating, and of course it was. And finally, she
8 told you about the impact that it had when she saw the
9 defendant post these ads about Jerricka and how he would
10 out people online. So let's walk through how Ayla --
11 Ayla's account has been corroborated.

12 First, think back to Exhibit 35. These are text
13 messages between the defendant and Chrissy Tatro. And
14 you see Chrissy letting the defendant know that Ashley
15 is crying; she doesn't understand why she is getting
16 kicked out. And you see the defendant's response:
17 Drive -- "drive no one no place. If she ain't got
18 money, she can't stay."

19 It's quite a contrast from yesterday's display
20 where the defendant seems to be Mr. Good Guy who would
21 just help out people whenever he could. You see the
22 real defendant come out in these text messages. "You
23 ain't got money, you ain't got a place to stay." That's
24 how you can believe the financial harm that Ayla was
25 talking about.

1 As far as violence at Lori's house, remember the
2 testimony of Keisha. Keisha talked about a time where
3 she saw the defendant bring Ayla into the bathroom, and
4 she saw Ayla coming out crying. Also, think about the
5 testimony of Mary. Mary told you about a time where the
6 defendant backslapped Ayla, knocked her out of the
7 chair, all because Ayla wanted to get well before seeing
8 a date. The instances of violence against Ayla have
9 been corroborated by that testimony.

10 Again, you know that Ayla participated in the
11 Walnut Challenge beyond any doubt because of the videos
12 that were found in the defendant's computer. And if you
13 think back about that video involving Victoria -- and
14 this is pretty subtle, but you might have seen it. When
15 Victoria stood up, what did the defendant do? He bent
16 her back over and said, "I didn't tell you to stand up,"
17 reinforcing the notion that the defendant's in charge,
18 he is in charge of those women, and they can stand up
19 when he tells them they can stand up.

20 And finally, as to the reputational harm, you know
21 the defendant did this because you saw Government's 36,
22 the ad where he says, "Watch out for Jerricka. She will
23 rob you."

24 Now, if you look at the other pages -- the other
25 pictures associated with that ad, unlike ads where he

1 posted to get clients where he kind of obscures faces so
2 to preserve some level of anonymity, he blasts out
3 Jerricka's pictures. He blasts out her pictures so
4 people know who he is talking about. If you cross him,
5 he is going to put this out on the internet, and again,
6 for someone like Ayla, it's going to keep you staying in
7 line so that that doesn't happen to you.

8 So let's talk next about Hannah. Hannah is the
9 minor, so there's different elements that apply to her
10 court. And this involves a time period, that May 2013,
11 when she was 17 and a half years old, because you have
12 the birth certificate that was entered showing she
13 didn't turn 18 until November 2013.

14 So think back to 47B. This was a Backpage ad found
15 on the defendant's computer, and let's pull out some
16 pertinent information. First, I know it's hard to see,
17 but the ad was posted on May 18th at 12:06 a.m. And
18 this is in the Burlington escorts part of the Burlington
19 Backpage, a place where you typically have commercial
20 sex activity occurring.

21 Remember the phone number. That phone number was
22 described to you by Svetlana, otherwise known as Shorty.
23 And of course you heard Government's 119, which was a
24 recording between Shorty and the defendant. In that
25 recording they talk about posting, and Svetlana says,

1 "If she's not being posted" or "she's not putting money
2 in our hands, she's not staying here." And based upon
3 where the pictures were taken, you know that was the
4 Motel 6 in Colchester.

5 So let's talk a little bit more about the pictures,
6 and again, even Mr. Martino agreed that the powering on
7 of the computer did not impact when this photo was
8 taken. And of course you know it was taken exactly 25
9 minutes before the Backpage post. The post was at 12:06
10 a.m. This picture that was in the Backpage ad was taken
11 exactly 25 minutes before. And let's think about the
12 circumstances of this picture.

13 Remember, Jasmine? Jasmine, who was present when
14 all these pictures were taken. She testified that it
15 was the defendant who was taking those pictures. It was
16 the defendant who was telling Hannah how to pose.

17 Again, these pictures were also in the Backpage ad
18 taken exactly 20 minutes before it was posted. Jasmine
19 was present in there. So was Svetlana. People that're
20 known to engage in commercial sex acts for defendant.

21 Now, also think back to the video that you heard
22 early on the first week of trial. That was introduced
23 through Mandy. The video the defendant talks
24 disparagingly about Hannah. In that video, he showed a
25 couple of pictures of Hannah. He said that his homies

1 think about her like this and like this.

2 Now, I know that was a couple years after 2013, but
3 his friends probably think of Hannah in that fashion, in
4 a sexual manner, because perhaps she did engage in
5 sexual acts.

6 But in any event, here are the elements of minor
7 sex trafficking, and let's walk through them with the
8 evidence.

9 First, as far as this Backpage ad, there's any
10 number of verbs that that could be satisfied. Most
11 easily, "provided." Taking a picture, putting it in a
12 Backpage ad, where the defendant is providing Hannah to
13 others. Or also "recruiting" and "enticing" her by
14 having her take part in these photo shoots with women --
15 other known women who engaged in prostitution.

16 Now, the second element just requires the defendant
17 has a reasonable opportunity to observe Hannah, and we
18 know that she was 17 years old -- 17 years old at the
19 time based upon her birth certificate and the dates
20 these photos were taken. And we know that he was the
21 one actually observing her because he was taking the
22 pictures based upon Jasmine. So that element has been
23 met.

24 As far as the third element, again, what's the
25 reason for posting the Backpage ad? It's to solicit

1 clients and to link clients up with women. So you know
2 that third element has been met.

3 And as far as the fourth element, Backpage, it's
4 obviously an internet website, so that's a piece of
5 facility of interstate commerce, and also this occurred
6 at the Motel 6, no doubt, based upon the bedspread and
7 the colorful walls, and that's a hotel that serves
8 out-of-state customers. So all of the elements have
9 been met.

10 Let's talk about a few things that you don't need
11 to worry about. First of all, whether Hannah actually
12 saw a crime or not does not matter. It's not one of the
13 elements, so you don't have to consider it.

14 Also, whether Hannah actually consented or not is
15 irrelevant. Under federal law, individuals under 18
16 cannot consent to sexual activity, including
17 prostitution.

18 The other thing you don't have to worry about is
19 Hannah didn't testify. You are going to receive an
20 instruction from the judge telling you that she was
21 unavailable for this trial and to not consider that one
22 way or the other.

23 Now, for the second category, which is the Travel
24 Act count, an easy way to think of this is Backpage ad
25 plus something else; for example, Backpage ad and

1 renting the hotel room. Here's the elements for that
2 particular count.

3 The first one is that the defendant used or caused
4 a facility of interstate interstate commerce which is
5 the internet, which is Backpage. And he does so to
6 promote and manage the prostitution business. I don't
7 think there's any debate about the defendant running the
8 prostitution business, and, in fact, I think his own
9 witness, Brittany Barber, talked about how the defendant
10 ran girls. And after he posted a Backpage ad, what
11 happens? Well, there's renting of a hotel room for sex
12 acts to occur in. Well, let's provide a concrete
13 example for you.

14 Think back as to the pictures of Keisha and
15 Danielle from that week in June 2015 when they
16 overlapped. These pictures were taken and found in the
17 defendant's Facebook account, and both of their
18 testimony is that was used to post a Backpage ad. Also,
19 ironically, if you look carefully at the pictures, it
20 doesn't seem to be that the women are smiling or
21 particularly enjoying themselves, but again, these
22 pictures were taken at the Ho Hum and at the North Star
23 and then used in the Backpage ad.

24 And afterwards, you saw that Mandy had rented hotel
25 rooms, which makes sense because they hadn't been to

1 Lori's house yet, so they'd need a place for sex acts to
2 occur at. So Backpage ad plus renting a hotel room
3 equals the Travel Act conviction.

4 Here's another example of a Backpage ad from
5 October 22nd, 2015. What else do we know? The
6 defendant was renting rooms at the Motel 6. So, again,
7 you post an ad, and then you rent a hotel room for the
8 prostitution to occur.

9 The third category of counts for you to consider is
10 the drug trafficking counts. That includes the
11 conspiracy, the four controlled buys, and the possession
12 with the intent to distribute. We are going to first
13 talk about conspiracy.

14 Conspiracy is an agreement between two or more
15 people to accomplish an unlawful plan, and the thing to
16 keep in mind is that it does not require a formal
17 agreement. It's not a contract where you have to divide
18 up your roles and responsibilities and sign off.

19 A conspiracy can be established just based upon
20 your actions. And let's talk about the actions that
21 occurred in this case.

22 So we know the defendant was at the top, and we
23 will show the control of this conspiracy through the
24 controlled buys and his possession with the intent to
25 distribute. But he's at the top, and one of his

1 suppliers is Donald McFarlan. He testified that he
2 would bring up roughly 50 grams of heroin from New York,
3 dole them out in 10-gram increments, which the defendant
4 would then sell, pay him back, and then Mr. McFarlan
5 would give him 10 more grams to sell.

6 We know that Mandy was one of the big runners, and
7 you saw her on the four controlled buys, and she would
8 do the hand-to-hand exchanges with clients.

9 And you also heard that Ayla, Hannah, Mary, and
10 Chrissy were some of the people that bagged up the drugs
11 when they came in bulk, put them in the bags so that
12 they could be sold individually to clients. How do you
13 know this?

14 Think back to the phone summary that Ms. Epp spoke
15 about in her testimony. Look at all the calls between
16 the defendant and Mandy. Certainly is consistent with
17 someone who was doing hand-to-hand transactions.

18 Same with the phone calls between -- with Hannah
19 and with Mary and with Chrissy. That's consistent with
20 someone who is a consistent bagger and is bagging drugs
21 up for you.

22 And also you have the calls with Donald McFarlan,
23 consistent with the testimony that he would bring the
24 drugs from New York and give them -- sell them to Mr.
25 Folks to then distribute in the greater Burlington area.

1 Now, there's an issue of weight in this conspiracy,
2 whether it's over 28 grams of cocaine and a hundred
3 grams of heroin. Now, that amount was met just based
4 upon the Froot Loops box. The Froot Loops box had 73
5 grams of cocaine and 128 grams of heroin just in that
6 alone. But even putting that to the side, think about
7 this: Think about Mr. DiSarno's testimony, who was the
8 chemist. He told you that five buns of heroin was
9 roughly one gram. For a conspiracy that existed for 10
10 months, 300 days, if you sell one gram of heroin every
11 day in the course of that conspiracy, that's 300 grams
12 of heroin. Even if you sell only one gram every other
13 day, that's 150 grams of heroin. You can easily get
14 over 100 grams of heroin.

15 And even if you think with the traffic stop there
16 was seven grams of heroin and four grams of cocaine just
17 in that one incident in January 2016, so you certainly
18 get past the weight. But again, the Froot Loops box
19 gets you that alone.

20 And how do you know that that Froot Loops box is
21 part of the conspiracy? Think back to that reported
22 call that you heard between Chrissy and Donald McFarlan
23 and the defendant. Who takes over that call? It's the
24 defendant. And what does he say? "Chrissy's going to
25 take it on the chin. We'll give her some cash. She

1 ain't got no reason to turn no face on anybody."

2 Now, is the defendant really worried about Donald
3 McFarlan's criminal liability? No. He is worried about
4 his own liability. He knows that this Froot Loops box
5 is part of the conspiracy, so he doesn't want Chrissy to
6 talk. He doesn't want to be connected to it.

7 That call continued. He says, "I'm going to give
8 you the money. Keep your mouth shut." Again, why is he
9 telling Chrissy to keep her mouth shut? He's telling
10 her to keep her mouth shut because he knows that cereal
11 box can be connected to him. If he had nothing to do
12 with the cereal box, then he shouldn't really care about
13 what Chrissy says or doesn't say, but he is specific:
14 "Keep your mouth shut."

15 And why does this conspiracy exist? For money.
16 Again, here's Government's 35 where he texts Chrissy,
17 "Go ahead and deposit money in Don McFarlan's account."
18 Why? It corroborates that Donald McFarlan provides the
19 drugs, he pays for them in bulk, and then he distributes
20 them out here in the greater Burlington area.

21 So the conspiracy has been met, and we're next
22 going to talk about the four controlled buys, which was
23 one theory yesterday, at some point it seemed like the
24 defendant was admitting that he was part of that or that
25 he arranged some, but regardless, you know what happened

1 beyond a reasonable doubt because you heard those phone
2 calls.

3 Here's the two elements. You just have to
4 knowingly distribute a controlled substance and know
5 what it was at the time. And of course it doesn't have
6 to be the defendant who is actually doing the
7 hand-to-hand sells. It can be delivered through
8 another, like it was through others in this case.

9 So the first buy. Look at the language the
10 defendant uses in these calls. "I can have somebody."
11 "It's my peoples." "I tell you." "Call me." What's
12 that show? That shows control. He is in charge. These
13 are his drugs. He can make it happen if they want
14 heroin or not.

15 And look further -- look what happens further on in
16 this transaction. When Mandy comes out to do the hand
17 to hand, who's she talking about? She is talking about
18 the defendant, because he's in control, and she
19 ultimately sells the six and a half bundles of heroin
20 for \$500. So you can go ahead and check that controlled
21 buy as being proved beyond a reasonable doubt.

22 So as to the next one, again, look at the language
23 the defendant uses: "Meet me." "What can I do?" "I
24 have to put a sleeve." "I ran out of bags." "I get
25 somebody else to do it because I don't really like doing

1 it myself."

2 The defendant's in charge. And what else does this
3 show? It corroborates the testimony of Mary, Chrissy
4 and the others that they bagged up the drugs for the
5 defendant because he doesn't like to do it himself.

6 What's also interesting about that controlled buy
7 is look carefully at what Mandy asks. She asks the
8 defendant, "I have to go to the kitchen to get them."
9 She has to get permission from the defendant to go in
10 and get the drugs to complete the sale. And ultimately
11 she sells five bundles to Nikki, who was Michelle's name
12 at the time. You know it was Michelle who testified.
13 She was using Nikki as her confidential informant name
14 at the time.

15 As to the third controlled buy, again, it's the
16 defendant saying, "I'm going to send her," as in Mandy,
17 "out right now, because I'm in charge. These are my
18 drugs. I'm going to send her out to complete the
19 transaction." And that's when you have the sale of six
20 buns for \$450.

21 And, finally, the fourth controlled buy, again, the
22 defendant's talking about "I started doing my sleeves
23 differently. I put a bundle in a bag." And of course
24 this was where there was an incident. Nikki was looking
25 to buy a sleeve, or 10 bags -- 10 bundles of heroin,

1 excuse me, and the defendant can only provide four. And
2 why was that? Because there was this robbery of his
3 stash in the car outside 103 North Union. And what
4 happened when he found out that his drugs were stolen?

5 He was upset. He was pissed. Remember what he did
6 to Mary? He put a gun to Mary's head and tells her,
7 "What makes you think I won't kill you right here right
8 now?" And this is after an earlier incident where Mary,
9 who was bagging up heroin while she was sick, thought
10 the defendant was in the other room and wanted to sneak
11 a little bit of heroin to make herself feel better.
12 What did she testify to happened next?

13 The defendant came out of nowhere, punched her in
14 the side of the head, knocked her out of her chair, and
15 caused her to see stars. Because, again, you don't come
16 in between the defendant and his heroin or his money.

17 Now, you heard a little bit from Ms. Otero, a
18 defense witness, who said that nothing happened after
19 this incident. But of course, according to Ms. Otero,
20 no drug activity ever happened while she was around,
21 which of course is just incredible, and you can't
22 believe that. So you can take Ms. Otero's testimony and
23 throw it out the window.

24 What else do you know about Mary? You saw those
25 pictures of her butt on the defendant's computer because

1 again he required her to give -- let him photograph her
2 butt for cigarettes. And also you saw the photograph
3 from the video where the defendant was urinating on
4 Mary, showing that he treats his drug workers much the
5 same way and controls them in much the same way as his
6 sex workers.

7 Even the defendant's exhibits show the control that
8 the defendant had over Mary, defense Exhibit QQ3, where
9 Mary tells -- or asks the defendant, "Is it okay for a
10 guy to come over because Ayla let him in and I don't
11 want to get in trouble." It's control.

12 And what did Mandy tell you about this incident
13 after the stash was stolen out of the car? As
14 punishment, she had to wear a red apron. How do you
15 know that that happened and how has that been
16 corroborated? Again, the defendant tells you himself in
17 that video. Remember back to that video with Hannah
18 where he talks about "I had to make the bitch walk
19 around in a fucking apron, dawg," and then what does he
20 show? He shows that picture on his computer of Hannah
21 wearing a red apron, corroborating Mandy's account that
22 that's how the defendant humiliates people that get in
23 between drugs and money.

24 As to Count 7, possession with intent to
25 distribute, the defendant possessed a controlled

1 substance, knew what it was -- knew what it was and
2 distributed it. And you will hear this instruction in
3 the concept of constructive possession, and what that
4 means is that you don't have to have it on you at the
5 time for it to be yours. Here's an analogy that might
6 help out.

7 You probably own more than -- more clothes than
8 what you are wearing right now. They are probably back
9 in your house or apartment in your closet. Those are
10 still your clothes because you have control, ownership
11 over them. Same thing applies with the concept of
12 constructive possession.

13 And how do you know those were the defendant's
14 drugs? Again, he videotaped the entire thing, and that
15 videotape was found on his computer. And look at the
16 language that he used telling Mandy to put the drugs
17 underneath the bag -- underneath the seat, and of course
18 why is Mandy asking the defendant where they should be?
19 Because those are his drugs. He is in charge of them.

20 But even without the video, think for a minute
21 about the process of elimination as to the four people
22 in that car. The driver, Mary, obviously was not her
23 drugs; she was the one who tipped off the police that
24 there's going to be drugs in this car. It's not Mandy's
25 drugs because Mandy doesn't even use drugs, so they're

1 not hers. As far as Mary, we know what happened when
2 Mary tried to use any of the defendant's drugs. She got
3 cold-cocked across the head.

4 That leaves the defendant, and of course that's
5 consistent with the evidence that those were his drugs,
6 because he is setting up controlled buys the very same
7 month it happened in the stop.

8 And what -- you heard from Mr. DiSarno that seven
9 grams of heroin were found in that bag and four grams of
10 cocaine, more than needed for personal consumption
11 because that's -- the reason they're found in these
12 bundles and packages is to sell them individually to
13 people.

14 Brings us to the final category, and final count,
15 felon in possession. You have the three elements in
16 front of you. The first and the third element are very
17 easy. Number one, the parties have already stipulated
18 that the defendant has been convicted of a crime
19 punishable by imprisonment for more than one year. So
20 you can check that off.

21 As far as the third element, you heard from the ATF
22 Agent Scott Murray, who told you that the firearm was
23 manufactured in Maryland and, of course, has to come
24 from Maryland to Virginia [sic] across state lines. So
25 we are going to talk a little bit more about the second

1 element, possession.

2 Again, the concept of constructive possession
3 applies. So, again, for example, many of you may own
4 lawn mowers. Of course the lawn mower is not here with
5 you right now, right? They may be back in your shed or
6 your garage or somewhere on your property, but that's
7 still your lawn mower.

8 How do we know it's the defendant's gun? He was
9 the sole occupant driving the car when it was pulled
10 over. We know that he is involved in a cash business;
11 selling drugs and prostitution is a cash-based business.
12 We know that sometimes people will try to steal drugs as
13 what just happened when the car was broken into and
14 drugs were stolen. And so perhaps you carry along
15 protection with you to prevent you from being robbed of
16 your drugs.

17 Now, defense may say that was not his car; that was
18 Lori Crawford's. Yes, Lori testified that she
19 registered it for the defendant, never used it. Also,
20 think back to 107B.12. That's the Facebook
21 conversation, a couple months later, where the defendant
22 tells Natalie, "I got cars to sell, including a Dodge
23 Durango, my Dodge Durango." And of course, defense
24 Exhibit UU6 is text messages from Chrissy saying that
25 the defendant had a gun in the car.

1 Let's also talk about fingerprints. The defendant
2 may say, oh, there's no fingerprints on this -- on this
3 gun, so we don't know whose gun it is. Think back to
4 ATF Agent Scott Murray. He testified that very rarely,
5 under 10 percent of the time, can you recover
6 fingerprints from a firearm because of the service of
7 the firearm. So you can take that argument and put it
8 to the side.

9 Remember the testimony of Katelynn and Danielle?
10 They talked about how the defendant would keep firearms
11 in his vehicles, and the testimony of many others who
12 saw the defendant with a firearm, including Mary, Ayla,
13 Chrissy and Donald McFarlan.

14 Ultimately, ladies and gentlemen, when you think
15 back again to that video with Hannah, to the defendant,
16 it's all about the green at the end of the day. That's
17 what he said in that video. We're not talking about gas
18 money like he was referencing yesterday. We're talking
19 about money, money that he doesn't care who he has to
20 hurt or who his heroin hurts in order to line his
21 pockets.

22 Ladies and gentlemen, you have heard all the
23 evidence in this case. The control is finally being
24 taken out of the defendant's hands, and that control is
25 being placed in your hands. You have the power and

1 control to do what Katelynn, Keisha, Danielle, Ayla, and
2 the other women cannot do, and that is to stand up to
3 the defendant and hold him accountable for his crimes.

4 The government asks that you apply the law to the
5 facts and return the only verdict that the overwhelming
6 evidence supports, and that's a finding of the defendant
7 guilty on all counts.

8 Thank you, your Honor.

9 THE COURT: All right. Let's take just a --
10 would you like a brief recess before you give your --

11 MR. KAPLAN: At least two minutes, Judge.

12 Thank you.

13 THE COURT: All right. So let's take a brief,
14 10-minute recess and have you come back after that.

15 (Court was in recess at 10:00 a.m.)

16 (The following was held in open court with the jury
17 present at 10:10 a.m.)

18 THE COURT: Okay. Mr. Kaplan?

19 MR. KAPLAN: Thank you, Judge.

20 Good morning, ladies and gentlemen. It's still
21 morning, right?

22 I'd like to just remind you of the awesome
23 responsibility that you have been chosen to perform.
24 You will, in a few minutes, be sitting in judgment of a
25 fellow citizen, and as I said to you, that is an awesome

1 responsibility, but it's exactly what our forefathers
2 intended, that there would not be a potentate-type
3 person or a king who would make this kind of decision,
4 but it would be fellow citizens like you who listen to
5 the evidence and then decide what's appropriate.

6 I'm convinced, after having watched you off and on
7 during the course of this trial, that you are an
8 extremely conscientious jury. You clearly paid
9 attention. No one fell asleep, and, believe it or not,
10 that happens on occasion. And you wrote down just about
11 everything. And so we're impressed. On behalf of my
12 client, I would like to thank you for your
13 attentiveness, and we're convinced that you will
14 deliberate in the appropriate manner and come up with an
15 appropriate decision.

16 Before we review the evidence together, I would
17 like to talk to you about an issue that keeps sort of
18 raising itself coming up in this case, and that has to
19 do with the cultural differences between the way most of
20 us live our lives, what we consider to be morally
21 correct, and the way Brian and the women who testified
22 in this case led their lives. I would suggest to you
23 that they lived in two separate worlds. And the
24 difficulty that you have is trying to judge what took
25 place in this case from the perspective of your world

1 and not from the perspective of Brian and the girl --
2 the women's world. Let me give you a couple of
3 examples.

4 You know, in this case, you heard a number of times
5 about women, for example, who gave oral sex in exchange
6 for drugs. And most people, if not everyone, would
7 think, who would -- who would do that voluntarily? And
8 yet in the world that Brian lived in, in the world that
9 these women lived in such as Danielle, that was common.
10 And not only it happened all the time, but it was -- it
11 was accepted.

12 You know, there's been a lot of talk about the
13 video of the Walnut Challenge, and, you know, you have
14 had people, for example, such as Chrissy, taking the
15 stand and cry about it. By the way, I submit to you the
16 evidence will show she wasn't even involved in it; she
17 wasn't there. So you need to look at that with respect
18 to the video.

19 But if you look at that video, you know, as
20 uncomfortable as it might be, you are going to see, and
21 you did see when it was played in court, a much
22 different image, a much different atmosphere than the
23 prosecutors are insisting took place in this case. You
24 won't see any evidence in that video that anyone was
25 forced to do anything.

1 You won't see any evidence that when Brian asked
2 Victoria to bend over, that -- that she didn't want to
3 do that. In fact, she was laughing. She was joking.
4 Look at her in that video, and she's joking, and she is
5 laughing, and they were all paid, and they all had a
6 good time, and Brian testified that that was part of a
7 portfolio that he was building up for the porn industry.

8 And I guess that represents what I'm talking to you
9 about as much as anything. I mean, you tell someone
10 what took place in that video, and it's unimaginable
11 that a young woman would agree to do that voluntarily.
12 So watch it, and you will see that they did.

13 And would that happen in your world? No. But it
14 happened frequently in Brian's world.

15 The other thing -- another example would be Mandy.
16 You know, Mandy testified that she fell in love with
17 Brian. But way before that, within days of when she had
18 met him, she was having nude photographs of herself
19 taken in the back seat of her car for Brian. Now, who
20 does that? Who does that in your world? Probably no
21 one. But in this world, the one that Brian lived in,
22 not at all unacceptable or not at all uncommon.

23 So what is my point? My point is that you can't
24 allow this kind of evidence to unduly influence your
25 decision. Now, I am not saying you can't use it in your

1 decision, because you may think it's relevant, but if
2 you are going to, for example, talk about -- look at the
3 Hannah video and use that in your decision, I submit you
4 have to make sure that that video somehow impacted
5 someone's life, a witness in this case, that they
6 decided, based on that video, that they were being
7 forced, coerced or tricked into becoming a prostitute.

8 Or does that video of Hannah just stand alone and
9 has no -- absolutely no relevance to whether or not
10 anyone was forced to become a prostitute or was coerced
11 or was tricked? And, in fact, with respect to the
12 Hannah video, that took place, I believe, sometime in
13 March of 2016, way after, for example, Chrissy, who
14 talked -- Keisha, who talked about it, ever had any
15 association with Brian with respect to prostitution.

16 So I submit it would be impossible to argue that
17 the Hannah video had an impact on Chrissy because she
18 was no longer working with Brian and never did again.

19 The same with the pictures that the prosecutor
20 talked to you about over and over again that were sent
21 to Keisha. That was way after she ever worked with our
22 client, Brian. So whatever you think about those
23 pictures, whatever you think about Brian doing that, you
24 need to ask yourself what -- how does that relate to
25 whether or not he forced Keisha or anyone else into

1 prostitution?

2 There's another point I'd like to make with you.
3 The prosecutor stood before you this morning and talked
4 about the horrible background these women had, and I
5 agree. I mean, there's no one that couldn't listen to
6 the life that some of these young women had and feel
7 sympathy for them. But -- and it's apparent that that's
8 what the prosecutor wanted you to do. But, you know,
9 because you feel sorry for someone doesn't mean that
10 person doesn't have an obligation to tell the truth.

11 You can have the worst background in the world, and
12 some of these young women did, but that doesn't give you
13 the right to go to the grand jury and lie under oath.
14 And so -- and the judge will, I think -- you will
15 receive an instruction that you can't allow your
16 sympathies to affect -- to affect how you decide it.
17 It's gotta be based on the evidence.

18 And I'll tell you what strikes me about the
19 prosecutor's presentation from day one is they say to
20 you Brian committed all of these crimes because these
21 women say he did, with very little corroboration.

22 Remember when the prosecutor was cross examining my
23 client and just acted totally shocked that my client
24 would deny that these women would say something? The
25 prosecutor said, "Are you saying they're lying?" It's

1 like they can't comprehend the fact -- at least don't
2 want to talk about the fact that their witnesses lied
3 over and over and over again.

4 So they want you to convict my client based on the
5 testimony of witnesses who just don't have the ability
6 to tell the truth, never told the truth, and not only
7 didn't tell the truth, but lied over and over again
8 about extremely important information. They weren't
9 lying about, you know, what school they went to or what
10 job they had. They were lying about stuff that's so
11 crucial in this case that it would sway, I submit, your
12 decision one way or the other.

13 Let me ask you this: Will you make any major
14 decision in your life based on the testimony of any one
15 of the prosecutors' witnesses? Would you cross a river
16 if Ayla told you it was safe without checking first for
17 yourself? And why is it that the prosecutor never
18 mentioned in his closing, never talked about the
19 credibility of his witnesses? Is it because he just
20 assumed that they were young and they were vulnerable
21 and they had, in fact, horrible childhoods, that that
22 would be enough for you to believe everything they said
23 and disbelieve everything that Brian said?

24 It doesn't work that way. You need to make a
25 decision based on the credibility of the witnesses, and

1 there's lots of different ways to do that. And this
2 raises an interesting point, I submit, is that what I
3 say to you is not evidence, and what the prosecutors
4 said to you is not evidence.

5 What's evidence -- what the evidence is is what --
6 is what you remember it to be. Not even necessarily
7 what you wrote down; it's just what your collective
8 memory is as to what took place or your own memory as to
9 what took place. It's not what he said or I say.

10 But I do want to point out to you several instances
11 in which I think that what the prosecutor said in his
12 closing is not correct, but it's not for me to say that;
13 it's for you to determine that.

14 I don't believe, I submit, that Katelynn never said
15 that Brian punched her in the butt. I never heard -- I
16 submit to you that Jasmine did not say that Brian pulled
17 her hair. I submit to you that Jasmine did not say that
18 Brian posted that -- that ad on Backpage for -- for --
19 that Hannah was in, that that was posted by Jasmine.

20 I don't recall any testimony, I submit -- the
21 prosecutor said to you that Keisha said that she was
22 homeless. I submit to you that that wasn't the case.
23 She wasn't even in the Walnut Challenge, as I mentioned
24 earlier. Keisha -- Keisha did not steal five bundles of
25 heroin. I submit to you that it was only five bags of

1 heroin. I don't believe that Keisha said that she was
2 sexually assaulted behind the dumpster. I believe she
3 said it was oral sex, however you want to define that,
4 but it's substantially -- if that is, in fact, her
5 testimony, it's substantially different than the way it
6 was portrayed to you by the prosecutor.

7 I submit to you that Danielle never said that she
8 saw Brian with a gun.

9 And that over and over again, the prosecutor talks
10 about certain acts of violence my client committed but
11 gives you no -- no corroboration. There had to have
12 been other people there. There's no evidence that
13 anyone saw anything along those lines.

14 Ayla never said -- and Ayla, in fact, frequently
15 called my client for -- for help when she needed it.

16 So my -- so my point is that you need to be very
17 careful when you listen to either the prosecutor's and
18 my version of what took place and ask yourself just how
19 credible the prosecution witnesses are.

20 Take Danielle, for instance. Okay? The prosecutor
21 stands up here and says to you -- just assumes that you
22 are going to believe everything she said, and yet it was
23 the prosecutor asking the questions of Danielle, and it
24 was the prosecutor who tells you that Danielle's telling
25 the truth, who asked her what her relationship with

1 Brian was and how they met, and then he showed her and
2 introduced Backpage messages between Danielle and my
3 client that occurred after she was in the motel, from
4 July and through the end of the year, but he never asked
5 her whether or not she ever sent nude photographs to
6 Brian before she went into the hotel.

7 He never showed her any Facebook messages that
8 he -- that Danielle may have had with my client before
9 she went to the motel.

10 Don't you think that if you are going to make a
11 decision on whether or not Danielle's telling the truth
12 it would be important that you understood the entire
13 relationship between Brian and Danielle? Why did the
14 prosecution leave it up to the defense to bring out what
15 the truth was? Otherwise, you wouldn't have had it.
16 Otherwise, you would have thought that Danielle bought
17 drugs from where Brian was staying for three or four --
18 three or four times when she went with some other guy
19 and Brian was there, and the next thing that happens is
20 she tells a guy named -- I don't know if I'm going to
21 remember his name, but she tells someone that knows
22 Brian that -- that she needs money, that she owes a drug
23 dealer \$300. This guy says, "Okay, I'll put someone
24 named Brian in touch with you," and she doesn't even
25 know, she says, when she gets in the car that Brian is

1 the person that she's bought the drugs from.

2 So in other words -- and doesn't know when she gets
3 -- well, when she first gets to the hotel that she is
4 going to be involved in prostitution. In other words,
5 she wants you to believe the way that it was presented
6 to you on direct examination that she had an extremely
7 limited relationship with Brian.

8 And why? Why lie about that? I submit it's
9 because they know she knows that if she tells you the
10 truth, it's going to be far more difficult for you to
11 find beyond a reasonable doubt that Brian forced,
12 coerced or tricked her into being a prostitution --
13 being involved in prostitution during those five or six
14 days.

15 I mean, do you remember on cross examination I said
16 to her, "Did you ever send Brian any Facebook messages
17 before you went to the motel?" And she said, "No." And
18 do you remember I said to her, "Did you ever send Brian
19 any naked photographs of yourself before you went to the
20 motel?" And she said, "No." And I said, Isn't that --
21 she said -- in fact, she said, "Absolutely not."

22 And I said to her -- because I had them. I knew
23 she had. And I said to her, "Well, if you had sent him
24 naked photos of yourself, isn't that something you would
25 remember?" And she said, "Yes." And then I showed her

1 the Facebook messages that occurred prior to when she
2 went to the motel with Brian, and they're irrefutable.
3 You will see them. They have been introduced into
4 evidence.

5 And if you look at the six or seven naked
6 photographs of her that she sent to Brian before she
7 went to the motel, you will see that they coincide with
8 the Facebook messages, same day, same everything.

9 So if Danielle takes this stand and lies to you
10 under oath -- that isn't anything the prosecutor told
11 you. He didn't say a word about her credibility. But
12 if she'll walk into this courtroom and lie to you under
13 oath about something as important as her relationship
14 with Brian before she went to the motel, how in the
15 world do you know when she's telling the truth and when
16 she isn't? I mean, how do you make a major decision
17 based on her testimony?

18 I mean, think about it. Think about the reasons
19 she gave as to why she went -- when she went to the
20 hotel and discovered there's prostitution going on,
21 couldn't leave. She said she couldn't leave because she
22 didn't have a place to live, she didn't want to leave
23 Mandy, and she didn't think Brian would let her.

24 Well, I submit to you it's obvious that she lied
25 about not having a place to live. The whole time she

1 was living with someone named Travis, and after she
2 overdosed, that's where she went back, to Travis's
3 house. She clearly had a place to live.

4 And do you really believe she decided to engage in
5 prostitution because she didn't want to leave Mandy?

6 Who does that? She'd only just met Mandy. It just, I
7 submit, boggles the mind that someone is going to go out
8 and sell their body for sex because she didn't want to
9 leave a woman that she just met.

10 And you now know that her fear about Brian not
11 leave -- letting her go is just made up, I submit. I
12 mean, she left at one point and went to McDonald's and
13 bought drugs and then came back. And when she wanted to
14 leave on June 20th of 2015, she told Brian she was
15 leaving; Brian didn't stand in her way. He didn't do
16 anything to stop her from leaving.

17 And you heard Brian testify about what she actually
18 did as a prostitute and why he was so upset with her,
19 because she wouldn't use a condom. She advertised
20 herself as someone who used drugs, and she would leave
21 with the guys that were her dates, and Brian wouldn't
22 know where they were. He couldn't protect her. And he
23 was concerned if something happened to her, he
24 wouldn't -- he wouldn't know where she was. Doesn't
25 that make more sense than what she said?

1 You heard Brian talk about the attorney convention
2 that she went to. Anything about that suggest to you
3 that -- that she was lying -- I mean that she was forced
4 into doing that? And why didn't she tell you about
5 that? She didn't tell you about it because they know
6 that if you got the full story, it's -- it would be
7 difficult for you to convict Brian of Count 13, that he
8 forced her to engage in prostitution by force, coercion
9 or trickery.

10 Do you really believe what she said in her Facebook
11 message on -- in September to Brian when she said, "I
12 want to come back to work for you tomorrow"? Do you
13 really think Danielle was talking about selling drugs
14 like she testified? She had never sold drugs for Brian
15 before. She was talking about, as Brian said, coming
16 back to work in the prostitution, and she was the one
17 who was asking Brian if she could go to the bachelor
18 party.

19 Remember when she overdosed? She testified here in
20 court under oath that she got the drugs from her father
21 and her father deserted her. That isn't what happened.
22 She got into a car, according to Brian, with a group of
23 other people. That's where she got the drugs most
24 likely. And if Brian had forced her into prostitution,
25 made her do things she didn't want to do, why in the

1 world would he be the first person that she would call
2 from the hospital after she had overdosed? Why would
3 Brian and Mandy go rushing up there to make sure she's
4 okay? Why would Brian wait in the car for her to come
5 out and give her a ride back to Travis's where she
6 wanted to go?

7 Does any of this make any sense to you? Does any
8 of this suggest that -- that Brian was forcing her into
9 doing anything?

10 You know, I submit to you that a lot of this
11 depends on how you look at the case. And if you recall
12 when Brian was being cross examined, that the prosecutor
13 was having a lot of trouble getting Brian to admit that
14 he was involved in prostitution, and that was because he
15 was asking the wrong question. It wasn't Brian's
16 feeling that these women worked for him, that he was
17 their boss, that he told them what to do. In fact,
18 there's not a lot of evidence that he did do that.

19 Brian's concept of what was taking place was that
20 he had a relationship with these women, he promised them
21 certain things, they promised him certain things, and
22 they both had an agreement to live up to. It wasn't
23 really that one was working for the other. So to a
24 certain extent, and if you think that's true, it will
25 affect how you think about this.

1 In terms of credibility, I mean, take a look at
2 Katelynn. The prosecutor in his closing just went
3 through all this stuff that Katelynn said, put it up on
4 the screen. It was nice looking. But where's the
5 corroboration of anything that she said? And how in the
6 world can you believe anything Katelynn said based upon
7 the number of times that she has lied previously? And
8 not only lied, but lied about extremely, I submit to
9 you, important issues.

10 Do you remember that Katelynn went to the grand
11 jury, and apparently she had used drugs that day, but
12 she went there and she raised her right hand and she
13 swore to tell the truth, and what is it that she told
14 the grand jury? When they asked her -- when the
15 prosecutor asked her how she met Brian, she said, "Well,
16 he was walking down the street. He seemed to be like an
17 interesting-looking guy, and so I went up and met him
18 and we started talking, and then we sort of had a period
19 of where we'd go out for dinners and stuff. It was kind
20 of a romance, and then I fell in love with him, and then
21 he asked me to prostitute, and I said okay."

22 So if you were asked to make a decision just based
23 on that set of facts, that would be one thing, but you
24 now know none of that's true, that she made all of that
25 up. She lied about all of that. The fact of the matter

1 is -- and she admitted this when she testified in this
2 case -- that she had already been working as a
3 prostitute for this guy named C-Rock.

4 And Brian explained to you in quite a bit of detail
5 how he met her, what she was doing, how they developed a
6 relationship. Is there any evidence in this case that
7 what Brian said to you about that is not true? Anything
8 at all to suggest that Brian made that up? No. That's
9 how he met her. She was working as a prostitute, and it
10 wasn't Brian that asked her to come work for him, as she
11 testified. She was the one who asked Brian if she could
12 work with him because she trusted him more than the
13 people that she was working with.

14 Do you really believe that Brian, for whatever
15 reason, would put his hands on Katelynn? He said,
16 "Look, I never told Katelynn that I loved her. I think
17 probably she got really fond of me at some point, but we
18 were friends. We had good times. She had a great
19 personality. We joked a lot. But I had no reason.
20 Number one, I didn't have any reason. I was never upset
21 with her."

22 So why, under those circumstances, would he put --
23 put his hands on her, even if he was inclined to do
24 that? There isn't any reason.

25 And, you know, it's interesting; these -- all these

1 witnesses got ready for trial and started saying things
2 completely different than they had said before. Do you
3 really think, do you really believe her story about
4 C-Rock coming over because he was upset with Ayla? Ayla
5 wasn't the one that was working for him. It was
6 Katelynn. Isn't what Brian told you more credible
7 that -- that C-Rock came over, wanted to get money
8 from -- from Katelynn because he thought Katelynn still
9 owed him money? Brian said, "She says she doesn't.
10 Leave. It's time for you to leave."

11 Do you really think that Brian would need to pull
12 out a gun and point it at this skinny African-American
13 that -- the way Katelynn described him. It looks like
14 not a lot of people messed with Brian, from the
15 testimony, as far as I can tell. There would have been
16 no need for him to have done that, and Katelynn, for
17 whatever reason, I submit to you, made that up.

18 All Brian did was come to her defense and protect
19 her. And you heard Brian talk about calling the people
20 that was associated with C-Rock and asking, "What do you
21 want me to do?" and they said, "Beat him up," and he
22 wouldn't fight, so he made up the story about Brian
23 pulling a firearm on him.

24 Doesn't that sound more credible than Katelynn
25 telling you that C-Rock came over because Ayla -- Ayla

1 never worked for him, and she did?

2 You know, Brian testified he knew that Katelynn was
3 seeing Brady. He didn't -- it wasn't a problem for him.
4 And it was Brian, I submit to you, who drove Katelynn to
5 New York. It was -- Brian had to stay down there for
6 several months, he had something to do, and when
7 Katelynn said she wasn't coming back, he said, "Fine.
8 You can stay at my mother's," which she did for a while.

9 Brian didn't do anything to prevent her from coming
10 back. He didn't interfere with her in any way. You
11 know, Brian testified that it never mattered to him if
12 someone stayed or didn't. Brian's feeling, as he
13 testified, was that these women -- most of them were
14 prostitutes already. They were going to go do whatever
15 it was they were going to do, and he felt he could give
16 them a safe environment. He would benefit in several
17 different ways, and they would benefit. He would take
18 them off the street, give them a place to live, and
19 protect them so they weren't involved with people like
20 C-Rock, who took all of their money and beat them up
21 whenever they -- when he thought he wanted to.

22 So Brian had no interest in preventing Katelynn
23 from coming back to Vermont. I mean, had no interest in
24 trying to drag Katelynn back to Vermont if she wasn't
25 interested in coming back.

1 You know, if you listen to the testimony of several
2 of these witnesses, when they were telling the truth,
3 they told you -- Katelynn said this -- that Brian lived
4 up to responsibilities. He lived up to his promises.
5 He promised he would provide protection, take care of
6 them, have drugs available for them so they know they
7 could buy safe drugs, take them to their appointments
8 when necessary, and help them get their rooms.

9 Three or four of these women all said that that was
10 true, that he did live up to his obligations. I mean,
11 you talk about the credibility of the prosecutors'
12 witnesses and think about Ayla. Can you think of one
13 instance when she testified that she told the truth? I
14 mean, really. She lied so many times and admitted to
15 it, but how in the world can you believe -- how would
16 you ever know when she is telling the truth and when she
17 isn't?

18 You heard Chrissy say that -- on that phone call
19 that she had with the two police in the car -- "Ayla
20 lies all the time. You can't believe anything she
21 says."

22 Now, the prosecutor never spoke to you about Ayla's
23 credibility, but we did. I mean, on cross examination
24 we made sure that the jury had an opportunity to hear
25 exactly what, I submit, should have been brought out on

1 direct examination, all of the lies that she told over
2 and over again.

3 You know, Ayla testified under oath that she met
4 with detective -- with a detective on December 10th of
5 2015, about six months after she met Brian. And -- and
6 she told the detective, you know, "I never prostituted
7 before I met Brian. Just didn't happen. And I only
8 decided to do it because two or three days after, I
9 didn't have any drugs, he didn't have any drugs, so I
10 decided to prostitute to, you know, make some money so I
11 could buy drugs."

12 Then she goes to the grand jury, and she tells the
13 grand jury that she never -- under oath, that she never
14 prostituted before. And she says that when Brian
15 suggested it to her, she was repulsed. Those were the
16 words that she used. She was repulsed.

17 And then she said, "The only reason I agreed to do
18 it was that he withheld drugs from me for three -- or
19 started reducing the drugs I got for three or four
20 weeks, so I had to go do it and make money so I could
21 buy drugs."

22 And then she came in this courtroom under oath and
23 said the same thing, said she had never prostituted
24 before and it was Brian who forced her into prostitution
25 because he withheld drugs from her. You know, on cross

1 examination, I submit to you, I gave her a perfect
2 opportunity to admit that what she had said all along
3 was a lie. I asked her two or three times if that was
4 the truth. I even gave her the names of the people that
5 she knew that she had prostituted before she met Brian,
6 and she still didn't change her story.

7 I told her about Brittany Barber, and I told her
8 about Emily Lasell, and she knew that both these women
9 knew that she had been prostituting before she met
10 Brian, yet she didn't -- wouldn't change her story. And
11 you heard those two women come in and testify. Brittany
12 Barber said yes, Ayla was prostituting before -- before
13 the spring of 2015. She had seen her in and out of all
14 those same hotels that we have heard so much about.
15 Probably no one will ever stay at a Motel 6 again
16 anyplace in the country. But she had seen her in and
17 out of these hotels constantly prior to the spring of
18 2015.

19 And Emily Lasell came in and said, yes, Ayla was a
20 prostitute, that she did that before the spring of 2015.
21 She was an addict. As Brittany said, Ayla was a serious
22 addict at that time. And, yes, she knew that Ayla was
23 prostituting.

24 And then I -- and to impeach what Emily said, she
25 didn't tell the whole story, Jennifer Martin from our

1 investigative team testified that when she asked -- when
2 she asked Emily how she knew that Brian was prostituting
3 her, Emily had told my investigator, "I knew it because
4 I did it with her."

5 So now you have someone who comes in this courtroom
6 knowing that what she says probably will determine to a
7 large extent whether or not you convict Brian of a
8 serious crime, and she's lying the whole time. Even
9 when she is given an opportunity to not lie, she keeps
10 lying. And if that's not enough for you, she
11 acknowledged that she lied on so many other occasions.

12 I mean, she told the victims advocate who works in
13 this building in the U.S. Attorney's Office and whose
14 job it is really just to make her life easier, to help
15 Ayla through this, to give her the support that she
16 needs, she lied to her on two occasions. She told her
17 that she had brain cancer when she didn't. She told her
18 that she had a job at Northwest Medical Center when she
19 didn't.

20 Ayla testified that she had lied on a number of
21 occasions to the police by giving them a false name,
22 Amanda White, because she didn't want to be arrested.
23 You heard her talk about the time in 2017 that she --
24 that one of the dates that she had on Backpage called
25 the police, said that she was -- her and Bradley were

1 trying to rob her.

2 And look at the Backpage posts that were introduced
3 with respect to Ayla. The defense introduced them all.
4 And they were Backpage posts that her and Bradley
5 Bordeaux posted because they were working by themselves,
6 not with -- not with Brian.

7 You know, Ayla said that Brian hit her, hit her,
8 like punched her in the face five or six times. She had
9 to go to the hospital. But she acknowledged there's no
10 hospital records. Can you visualize going to the
11 hospital medical center for treatment and there's no
12 record that you were ever there? That doesn't happen, I
13 would submit.

14 So if she lied about that, how do you know that she
15 wasn't lying about whether or not Brian -- you heard
16 Brian testify. He's a pretty big person. If he had hit
17 Ayla, I think it would be a lot more obvious than the
18 evidence that's been introduced in this case.

19 And this business about Brian kicking Ayla out of
20 the house when she had no place to go and she was out in
21 the cold? You know that's not true. Ayla testified
22 that Brian -- I mean, Brian asked her to leave because
23 she was stealing drugs and causing a lot of havoc at
24 Spring Street, so he asked her to leave.

25 And you heard -- you heard her testify that Brian

1 gave her and Bradley Bordeaux his car to sleep in at
2 night so they wouldn't be left out in the cold, and --
3 until they could find better arrangements. Does that
4 sound to you like someone who would treat Ayla in a
5 cruel manner?

6 So I have talked to you a lot about the
7 credibility -- excuse me a minute.

8 I talked to you a lot about the credibility of the
9 witnesses and why is it only the defense that has to
10 raise that issue with you when you can see, I submit,
11 quite easily that that's maybe the most crucial issue in
12 this case. Why doesn't anyone else talk to you about
13 why you should believe these witnesses, not just stand
14 up in front of you for an hour and say you need to
15 believe what Ayla said, you need to believe what Keisha
16 said? Why not tell you why you need to believe it in
17 the face of all the lies that have been told?

18 Now, one way to judge the credibility of witnesses
19 is to ask yourself, do any of these witnesses have a
20 vested interest in the outcome of the case? Obviously
21 Brian does. But do any of the prosecution witnesses
22 have a reason to tailor their testimony to please the
23 prosecutors in this case?

24 And I submit to you that every single prosecution
25 witness, maybe with one exception, had more than enough

1 reasons to say whatever it was that the prosecutors
2 wanted them to say. Certainly Mandy and McFarlan were
3 looking for a deal on a sentence.

4 I still am amazed by McFarlan's testimony where he
5 just couldn't get it out of his mouth that he wanted a
6 lower sentence and that's why he was -- even when he was
7 confronted with telephone calls he made where he kept
8 saying to his girlfriend, "I want to get as low a
9 sentence I can." How do you do that? You cooperate.
10 Why would he say that? But anyway.

11 So clearly those two had a reason to come in and
12 say whatever it was the prosecutors wanted them to say
13 to get a lower sentence. And the other witnesses,
14 prosecution witnesses, didn't want to be charged. I
15 mean, take Chrissy, for example.

16 Chrissy, by her own testimony, had acknowledged
17 that she sold a lot of drugs, mostly for McFarlan, I
18 submit. She helped out with the prostitution business,
19 would drive the girls back and forth or stay in their
20 rooms or whatever. So she clearly could have been
21 charged, but she hasn't been charged.

22 And I submit to you that what's really interesting
23 about Chrissy's testimony is how different it was when
24 she was not meeting with the government, when she was
25 not preparing her testimony, compared to what she said

1 when she came into court and testified. I mean, it's
2 like a -- you recall a phone call. We called her in the
3 second time, put her on the stand, and we played that
4 phone call where she was in the police car with two
5 policemen from Essex.

6 And do you remember what she said in that call?
7 Ask yourself why in the world is that so different than
8 what she testified to when the prosecutor put her on the
9 stand in this case after having rehearsed her testimony
10 with her for who knows how long? Why -- why wouldn't it
11 be the same if Chrissy's someone that tells the truth?

12 Chrissy told the police in that car that -- I mean,
13 think about this. This is when she has no reason to
14 lie. She is working with these guys. I think she kind
15 of likes it. She's getting paid, so she wouldn't -- she
16 wouldn't -- doesn't have any reason to not tell these
17 officers the truth, and what does she say? She says
18 that she is not afraid of Brian. She's really clear
19 about that, she's not afraid of Brian.

20 Not only did she say -- this must have been in
21 November, probably early December 2015. Not only did
22 she say she's not afraid of Brian, but she says --
23 contrary to what the prosecution has dragged out of
24 their witnesses, she said that she has never seen Brian
25 hit any of the women and never seen Brian abuse any of

1 those women. Never.

2 So what would be her reason for saying that to the
3 police if it wasn't true? And she says that Ayla -- as
4 I said before, "Ayla lies all the time." She
5 certainly -- and don't forget, this was after Brian
6 asked her to leave because she was stealing drugs. And
7 she didn't mention, as she did on the first time that
8 she testified, that Brian had forced her to have oral
9 sex and wasn't doing it right so she asked Ayla to show
10 her. Ayla said that didn't happen. Ayla -- when Ayla
11 was asked that by the prosecution, she said, "No, that
12 didn't happen."

13 And so what does she say when she comes in the
14 second time four years later, when we called her? All
15 of a sudden she remembers that Brian sexually assaulted
16 her. I mean, she never said that to the police in the
17 car. She never said that in all the meetings she had
18 with the police. She didn't say that when she testified
19 the first time.

20 How come, all of a sudden, when she testifies the
21 second time, she's saying that? You would have to
22 wonder what would she say if she came in the third time.

23 And so -- and don't be fooled by -- by Chrissy's
24 tears. You heard Brian testify that the women used to
25 practice on Brian so that if they got in trouble, they

1 would have him help them get out of it. But more than
2 that, think about the phone call that she was -- that he
3 was having -- Chrissy was having with McFarlan when the
4 drugs from that cereal box went missing.

5 She's making up all these reasons to McFarlan as to
6 why he should believe that the police aren't involved.
7 She's lying to him over and over again, and when he's
8 not buying it, she starts sobbing. You know, she's
9 crying, you know, just like real tears. And then after
10 she hangs up, she says to the police, "I should get an
11 Academy Award for that." So maybe she should get an
12 Academy Award for some of the things she said during
13 this trial too.

14 I mean, if she was really afraid of Brian, and
15 Brian had done any one of these things to her, why would
16 she be texting Brian, texting Mandy and other people she
17 wanted to come back and work with them? I mean, why --
18 who does that? Someone sexually assaults you, forces
19 you to have oral sex, and you beg them to let me come
20 back and sell drugs for you?

21 I submit to you Jasmine was sort of in a similar
22 situation. Jasmine never said, I submit, that Brian
23 ever physically touched her or hurt her. And you heard
24 Brian talk about that Brian's problem with Jasmine was
25 he didn't want her to go with someone that had HIV. And

1 she would -- she wouldn't not do that, so he says,
2 "Fine. We're done. You know, I just can't have that --
3 that disease prevalent in the people that I know."

4 And then take a look at the defense witnesses, and
5 ask yourself if any of them had any reason to lie, or if
6 any of them had any reason to manufacture the truth or
7 they had someone to please.

8 Certainly Brittany Barber did. Brittany Barber and
9 Ariel Otero painted a much different picture of who
10 Brian is than all of the prosecution witnesses who were
11 looking for a favor. And neither one of them received
12 any benefit. I mean, Danielle was paid over \$11,000,
13 Mary was paid almost 7,000, and Ayla was paid over
14 \$10,000 over a year period. And the year before that
15 they were given all kinds of help. That's a lot of
16 money.

17 And Brittany Barber and Ariel Otero weren't paid
18 anything. Brittany Barber described Brian as someone
19 who is -- who was respectful to her, treated her
20 properly. She testified that she was the one who asked
21 him if she could work with him as a prostitute, and he
22 said sure. And he gave her a place to stay for free out
23 on the North End, at Unc's place. She paid, after what
24 she made, to Mandy.

25 And she only did this for two or -- two weeks or so

1 because she said she wanted to get clean, and when she
2 told Brian she wanted to get clean, he said fine. You
3 know, words to the effect, "I think that's what you
4 should do," but she said when she was with him, he was
5 fine. He didn't do anything disrespectful to her.

6 And Ariel Otero said essentially the same thing.
7 Ariel was with him from, like, the beginning of November
8 all the way through -- almost all the way up until July
9 when Brian was arrested. And she also painted a very
10 different picture of Brian than the prosecutors'
11 witnesses.

12 The whole time she was with Brian, she said he was
13 respectful, he was courteous, he knew that she was in
14 the prostitution business, and he never asked her to
15 work for him. He didn't solicit her to do that. Not
16 only didn't he solicit her, but he encouraged her to get
17 out of the business. He said she wasn't using drugs.
18 She didn't need to be a prostitute to buy drugs. He
19 said, "Why are you doing this? You could do much
20 better."

21 And I talked to you a little bit about none of
22 the -- almost none of the prosecution's evidence in this
23 case is corroborated. They want you to just accept what
24 the witnesses said at face value.

25 Take Mary, for example. Mary says that Brian

1 called her over, like on February 10th, pointed a gun at
2 her when she got there -- that's the first thing she
3 said. The second time she was asked about it, she said
4 Brian -- in the bathroom, she said. And the second time
5 she said Brian pointed a gun at her in the bedroom. And
6 then the third time she talked about it, she said Brian
7 pointed a gun at her after he assaulted her.

8 So we don't really know exactly when the gun was
9 pointed at her, but she says that Brian dragged her
10 around the apartment, dragged her into the bedroom, and
11 Brian and someone else had -- sexually assaulted her.

12 And you will see -- we introduced a diagram of it,
13 and when she says that Mandy and Ariel were sitting on
14 the couch, they were hearing all this and they were
15 laughing. And you will see a diagram of the apartment.
16 I submit to you, if a sexual assault was taking place,
17 they would have heard it. And Ariel said that never
18 happened. "I never saw or heard anything like that.
19 And I certainly wouldn't have allowed it. It's
20 certainly something I would have interfered in."

21 And the important question, I would submit to you,
22 in that sense is why didn't Mandy say she heard it if
23 that's what happened? I mean, Mandy was only too eager
24 to respond -- I submit, to respond to the prosecutor's
25 questions about all the bad things that Brian had done.

1 Well, don't you think if she -- if she was aware of the
2 fact that Brian was having -- making a sexual assault,
3 she would have said that to you? Why didn't she say
4 that?

5 You know, when -- when the prosecutor said to you
6 that Brian hit Mary and she fell off the chair, why
7 didn't anyone else in this case say they saw that? She
8 wasn't there alone, apparently. So it's another example
9 of the prosecutor just wanting you to take at face value
10 what the witness is saying because they're young and
11 they have, you know, unpleasant childhoods, which -- I
12 am not even sure Brian knew that any of them did. I
13 don't recall any evidence that he knew that, but I
14 submit to you that's not enough. You know, you still
15 have an obligation to tell the truth.

16 There's been some -- I would submit that Lori
17 Crawford is someone that actually spoke in favor of
18 Brian, and she may be the one person who knew more about
19 him than anyone else. She said that when she wanted to
20 go to rehab, it was Brian that encouraged her to. It
21 was Brian that drove her over there.

22 She said that she would rely upon Brian to help
23 with her boys, to talk with the boys, get them to stop
24 doing some things they should not be doing. Brian even
25 gave them a job babysitting for his son -- I think they

1 may have even been the same age -- because he wanted to
2 get them off the street. Would Lori have done that with
3 someone that you didn't trust, you didn't like, you
4 didn't think was a respectful individual?

5 And, you know, another issue that you never heard
6 anything about in the prosecutor's closing is the fact
7 that McFarlan held a knife to Mandy. Not Mandy; I'm
8 sorry. To Lori Crawford.

9 Lori testified that in the middle of the night she
10 found someone in her room, and it was McFarlan who held
11 a knife to her throat, and she was scared. She also
12 told you that McFarlan punched her in the chest, and she
13 told you that McFarlan was accusing her of stealing and
14 was going after her, and Brian stepped in and said,
15 "Wait a minute. What's the problem?" and Brian gave
16 McFarlan some money so he would back off Lori Crawford.

17 You didn't hear that in the prosecutor's closing.
18 And, you know, when the prosecutor engaged in direct
19 examination of Lori Crawford, he never asked her about
20 that at all. Never said -- because she had said that on
21 a number of occasions. It was in all the reports, and
22 it was in the grand jury testimony that she did. They
23 knew.

24 Why didn't they ask her that on direct so that all
25 of you could have all the information that you need to

1 make a reasonable and appropriate decision in this case?

2 You know, Count 15 deals with Hannah, and there
3 are -- I would submit to you there are several important
4 considerations. The prosecutor's already given you the
5 law, but I still think, I'd submit, and you can take
6 this for what it's worth, that it's significant that
7 there's no evidence that she was a prostitute. None.

8 And there's no evidence that that ad being
9 posted -- by the way, it wasn't posted by Brian. It was
10 posted by Jasmine -- that that -- that picture was ever
11 intended for Hannah to prostitute.

12 You heard Brian testify that it was a bait and
13 switch, that she was so attractive that people would
14 call when they saw it. They wouldn't get her; they
15 would get someone else. So that's why. So there wasn't
16 ever any intent for her to be a prostitute, and every
17 witness who walked into this courtroom, from the
18 prosecution's standpoint, when they named all the people
19 that were working prostituting, never once mentioned
20 Hannah.

21 Now, a significant issue in the case is that that
22 photo was taken about six months before she turned 18,
23 and if you look at pictures of Hannah back in 2013, she
24 was a very mature-looking young woman. I submit to you
25 that no one ever could have known that she wasn't 18 at

1 the time. And I submit to you that Brian, back then in
2 2013, never had an opportunity to know whether or not --
3 I mean, it would be natural, I would submit, for him to
4 assume that she was 18 because of the way she looked,
5 but she had only -- he had only seen her on two
6 occasions, and neither one of those was for a very long
7 time.

8 And so if you look at the charge, I would submit to
9 you that someone that looks as mature as she did, six
10 months away from her 18th birthday, it's not readily
11 apparent that she's not 18. In fact, I would submit to
12 you that the reverse is quite true.

13 I have to apologize for going so long. I am a half
14 hour longer than I usually do, but there's a lot in this
15 case.

16 You know, one of the points that the prosecution
17 made in its opening and they made through this trial and
18 got the witnesses to say it was Brian didn't want the
19 women to leave. If they wanted to quit prostituting, he
20 would do everything he could to keep them from doing
21 that. Well, Keisha is a perfect example of why there's
22 no truth in that at all.

23 Keisha prostituted for one day in 2013, and I
24 believe the evidence is, I submit, that she never saw
25 anyone. She was in a hotel room but nothing ever

1 happened. And she said to Brian, "I don't want to do
2 this," and Brian -- you heard Brian testify she wasn't
3 ready. He said fine. He gave her a ride back to her
4 grandmother's. Does that sound like someone to you that
5 would force women to prostitute if they didn't want to?

6 I would submit to you that what the prosecutor said
7 to you about what took place in June of 2015 with Keisha
8 and Brian is not at all, by a long shot, supported by
9 the evidence. It was Keisha who called Brian and said
10 that "I just got out of rehab. I want to come back to
11 work. Will you pick me up?"

12 Don't forget between 2013 and 2015, Keisha was
13 working as a prostitute on her own, and she had built up
14 her own clientele. Brian told you that he had seen
15 her all over the place at the different motels. They
16 ran into each other at the beach, for example. They had
17 a good relationship. But she wasn't working with him.

18 So he says, "Sure. Just take a cab and I'll pay
19 for it." So she takes the cab from the bus terminal to
20 the motel that they're in. Danielle's there at the
21 time. And he said Keisha was there for a day, maybe
22 two, and Brian asked her to leave, and he asked her to
23 leave because she had her own clientele. People were
24 calling. She didn't want to pay Brian anything, not
25 even gas money.

1 He said, "Look, you don't need me. This isn't
2 working. I am driving you all over the place. I'm not
3 getting any money. You will do better on your own."
4 And she left.

5 Does that sound to you like Brian made it difficult
6 for these women to leave?

7 You know -- and the charge is that Brian somehow
8 coerced or forced, or by some trick, Keisha into working
9 as a prostitute in 2013 and, Count 12, between June of
10 2015 and, I don't know, January, February of 2016.
11 Where's the evidence that he did that?

12 I mean, you heard testimony that it was Keisha in
13 2013 who asked Brian if she could work as a prostitute.
14 She had been talking with Katelynn. She saw the money
15 that Katelynn was making. You remember I asked her on
16 cross examination, "What did you say to him?" "I said
17 I'd give it a try because I was interested in making the
18 money." And she said -- she decided to give it a try
19 but was there for less than a day.

20 So can you really convict Brian on the state of
21 this evidence beyond a reasonable doubt that he forced
22 Keisha into prostitution in 2013?

23 You know, after she left Brian in 2015, when she
24 was there for a day or two, she never worked for Brian
25 again. That was her testimony. On cross examination,

1 she said -- because I showed her some ads, Backpage ads,
2 in January and February of 2016. She said, you know, "I
3 mostly worked for myself." You know, "I did it with
4 Brian a few times. Mostly myself." And she said, "If I
5 ever needed help, I could call Brian."

6 And so that if you look at the phone calls, they
7 still had a number of phone calls between November and
8 February of -- or January of 2016, and I submit to you
9 if Brian had sexually assaulted Keisha back in November
10 of 2015, do you really think that she would stand up --
11 sit up here calmly and say, "I could call Brian whenever
12 I wanted. If I ever needed anything, he would help me"?
13 I mean, who does that? Because she didn't need Brian
14 really. She had her own clientele, but she still stayed
15 in touch with Brian.

16 Brian brought her to another house, said, "Look,
17 you can't work with me anymore because you stole drugs,
18 and did the stuff you did." He yelled at her. He
19 tended to do that. So, "You can go to this house. They
20 are doing the same thing." It's not like he left her
21 out -- he left her out in the cold.

22 How in the world can you convict him of forcing
23 Keisha or tricking her or pushing her into prostitution,
24 as Counts 11 and 12 indicate?

25 Count -- Count 1 is the conspiracy drug charge, and

1 the prosecutor explained to you that you need to find
2 that he sold at least 28 grams or more of crack -- or at
3 least 28 grams or more of crack in the conspiracy and
4 that it was more than a -- a hundred grams or more of
5 heroin in the conspiracy. And so the prosecutor did
6 some fancy footwork by talking about, well, there was
7 this amount of sales in this amount of time, and, you
8 know, you get 300 grams; but there's no evidence that
9 any of that took place.

10 And you know from the four sales that did take
11 place they were really small quantities. The only
12 amount of drugs that they physically had possession of,
13 that Brian may have been involved in, is like 11 grams
14 of heroin, a far shot from a hundred grams, and about
15 four grams of crack. So the real --

16 I submit to you, the prosecution's right. If you
17 find that that cereal box of -- drugs that were in the
18 cereal box was attributable to Brian, then, yeah, he
19 meets that; well, maybe not quite, but it's closer.

20 So the whole key, I submit to you, to whether or
21 not Brian's guilty of Count 1 is whether or not he was
22 in a conspiracy with others with McFarlan. Because if
23 he wasn't in a conspiracy with McFarlan, then the drugs
24 that McFarlan brought up in January of 2016 that were in
25 the cereal box should not be attributable to Brian

1 because he had nothing to do with it.

2 And I submit to you it's clear that Brian was not
3 in a conspiracy with McFarlan. The judge is going to
4 give you a charge on what a buyer/seller relationship
5 is. That's different than a conspiracy. I am not
6 saying Brian wasn't involved in a drug conspiracy with
7 maybe Amanda or others, but it wasn't -- I submit to you
8 it wasn't McFarlan.

9 Pay close attention to -- the charge will go in the
10 jury room, again, with you, and in that charge there's,
11 I don't know, seven, eight, nine different factors that
12 you look at to determine if someone is in a conspiracy
13 or just in a buyer/seller relationship, and I submit to
14 you that almost every one of those factors is in favor
15 of finding that Brian was not in a drug conspiracy.

16 McFarlan testified that he would bring up maybe 50
17 grams at a time but that Brian would only buy some of
18 it. McFarlan said, "I thought of myself as -- as
19 Brian's drug dealer," not "I thought of myself as being
20 in business with Brian." They didn't split the
21 proceeds. McFarlan could have cared less what Brian did
22 with the drugs that he bought. McFarlan never told
23 Brian who to sell to or how much to charge for them.

24 You go through those factors, you are going to see
25 that it's clearly, I submit, a buyer/seller

1 relationship.

2 And then on top of that you have the fact that
3 Chrissy's testifying in December and January of 2016
4 that Brian and McFarlan are not together. They're not
5 working together. And then you heard the phone calls
6 that the prosecutor keeps telling you about, where in
7 those phone calls Brian's saying -- saying to Chrissy,
8 when she's complaining about the fact that McFarlan's
9 giving her a rough time because the cereal box was
10 taken, Brian said, "I told you not to get involved with
11 him. I told you I didn't want anything to do with that.
12 I don't want to be in the middle of this. I wasn't
13 involved." Does that sound like someone who was
14 expecting that those drugs were going to be delivered to
15 him?

16 And anyway, McFarlan testified that the drugs were
17 always his until Brian bought what he wanted. Then
18 whatever Brian bought became his, and in the meantime,
19 they were all McFarlan's. McFarlan had his own
20 customers. He was -- he did undercover buys -- sale in
21 January, I think January 12th, in Winooski. So he was
22 selling his own drugs himself up here. So how do you
23 know who those drugs were for? They clearly weren't for
24 Brian.

25 I would submit to you that if you look at all the

1 evidence with respect to the drug conspiracy, there's no
2 way in the world you could find that that cereal box was
3 attributable to Brian.

4 Count 2 has to do with the firearm that's found in
5 the glove compartment. What's the evidence that Brian
6 possessed the firearm? No fingerprints. No one ever
7 said they saw Brian with that particular gun. In fact,
8 no one ever said they saw Brian with the same gun.
9 Everyone talked about different kinds of guns. But no
10 one ever said they saw Brian with that gun.

11 That car, even though it's clear that Brian
12 considered it his -- I think he said that when he
13 testified -- everybody drove that car. He said, "That's
14 why I had it. Everybody drove it." Lori drove it. She
15 even rode in it on occasion. Mandy drove it. A lot of
16 people drove that vehicle.

17 You know, you heard Brian testify that every time
18 he got in a car, about, the police stopped him and they
19 searched the vehicle. Do you really think that Brian
20 would put a firearm in a glove compartment knowing that
21 the chances of the car being stopped and searched are
22 almost a hundred percent?

23 I mean, I don't know what the truth is here or not.
24 Katelynn said Brian had a gun, that he would put the gun
25 in the trunk and the clip in the glove compartment.

1 That's not what happened here. But I would submit to
2 you that if you are going to convict someone of a
3 serious firearm crime, that you need more than just --
4 just the fact that Brian's in the same car, driving the
5 same car that a gun is found in the glove compartment
6 with no fingerprints.

7 Can you really find beyond a reasonable doubt that
8 that firearm belonged to Brian based on the state of the
9 evidence?

10 Now, I want to talk to you for a minute -- I
11 haven't kept track of the time, but you probably have,
12 but I want to talk to you for a minute about the quality
13 of the prosecution evidence, and I can't think of a
14 better example than Miss Epp.

15 I mean, think about it. This is an important
16 federal criminal case. You probably -- definitely have
17 a feel by now of all the time and effort that the
18 prosecutors put into putting this case together. I
19 mean, I don't think I am out of turn saying there were
20 thousands and thousands of pages, hours of
21 investigations, and what do they do with the most
22 crucial piece of evidence in this case, the computer?

23 They hand it over to someone who's never searched
24 it before, never done a computer search, and they let
25 her go into the -- turn on the computer for, like, six

1 or seven hours and just go in and roam around. Who does
2 that? I mean, the agents had to know that you don't do
3 that. I mean, you heard our expert testify about that.
4 Just -- if that ever happens to him and he gets a
5 computer, he knows it's been turned on, he can't -- he
6 can't certify it because it alters files, it changes
7 files, files get deleted.

8 Now, I know the prosecution's made a big point of,
9 well, none of the pictures they introduced were affected
10 by that. Really? I mean, there's some -- there's some
11 things in those pictures you can't explain. And how do
12 you let a prosecution allow something like that? Not
13 only that, she doesn't -- she doesn't write a report.

14 This is a chain-of-custody issue. It's the fact
15 that she turned on the computer. I wonder if Thornton
16 said to her, "What? You turned on the computer?" But I
17 don't think he cared either, because when he wrote his
18 report, he never said a word about the fact -- he never
19 told us that the computer had been turned on.

20 The defense never would have found out if we hadn't
21 hired our own expert who, within a half hour of looking
22 at the evidence, had discovered that the computer had
23 been turned on. Why didn't Thornton tell us about that?
24 Why didn't he put that in the report? Why didn't -- why
25 didn't Miss Epp write a report saying she had turned it

1 on?

2 I mean, she -- she talked about all the training
3 she had, like 12 weeks someplace in forensic analysis or
4 something. No one ever said to her during those 12
5 weeks that you can't turn on a computer? I would be
6 willing to bet that anyone who is involved with
7 computers knows that you can't do that. A federal
8 prosecutor should have known, I submit, that you can't
9 do that.

10 And that goes along with the entire presentation
11 that the prosecution used. How is it possible that they
12 put Ayla on the stand and let her say she never
13 prostituted before? What kind of an investigation is
14 conducted if they don't know that but we know it? Or if
15 they don't know that -- that Katelynn lied to the grand
16 jury until months later. We knew what she had been
17 doing.

18 So you are being asked to make a decision just, I
19 submit to you, on faith. The prosecutor says, you know,
20 it's -- this is the way I interpret it: "That it's good
21 enough that we tell you this is what our witnesses say.
22 You should convict Brian because of that." And I would
23 submit to you that Brian never withheld drugs from
24 anyone, never tricked anyone into prostitution, never
25 told anyone that he loved them, never created an

1 atmosphere where people would do stuff for him such as
2 prostitution for that reason. That as both Katelynn and
3 Ayla testified, he lived up to his bargains with these
4 women. He agreed to do what he did, and he did that.

5 And I would submit to you that I'm not sure why the
6 entire burden falls on Brian in the first place. You
7 heard Dr. Higgins testify in that people have choices.

8 Now, obviously I understand if you are -- if you
9 are an addict, your impulse reactions are quicker than
10 if you are not an addict, and it's more difficult maybe
11 to make the right choice. But Dr. Higgins said you
12 still have the ability to make choices, because --
13 addicts too. I mean, at some point they always say,
14 "I'm not going to do this anymore. I'm going to go to
15 rehab" and they don't. Sometimes they are ready and
16 sometimes they're not.

17 But Brian's position was that "if these women are
18 going to prostitute and -- because they need money for
19 drugs, then I'm going to make sure they are in a safe
20 environment." And you can believe that or not believe
21 that, but I haven't seen an awful lot in the evidence
22 that's been introduced by the prosecution that says
23 anything different than that.

24 I have already said to you that what I said and
25 what the prosecutor says is not evidence; it's how you

1 remember the testimony.

2 The other point I would make is that as you see my
3 client sitting in court here today, he is presumed to be
4 innocent, and that shroud of innocence stays with him
5 all the way through these proceedings and all the way
6 through your deliberations and only leaves him in the
7 event that you decide that he's guilty beyond a
8 reasonable doubt. But I would submit to you, based on
9 the quality of the evidence that the prosecution
10 introduced in this case, that he should be found not
11 guilty on all counts.

12 Thank you.

13 THE COURT: All right. Let's take, again,
14 another 10-minute break, and then, the government wish
15 to make a rebuttal?

16 MR. DARROW: Yeah, I think so. Yes.

17 THE COURT: Okay. All right. So let's take a
18 10-minute break and see you then.

19 (Court was in recess at 11:23 a.m.)

20 (The following was held in open court with the jury
21 present at 11:35 a.m.)

22 THE COURT: Okay. The government have
23 rebuttal?

24 MR. DARROW: Yes. Thank you, your Honor.

25 THE COURT: Okay.

1 MR. DARROW: I will try and keep it fairly
2 short. I know it's been a long three weeks.

3 Yesterday Mr. Folks got on the witness stand and
4 testified that all of the witnesses in the government's
5 case, all seven of these women, were lying about
6 virtually all of his involvement. And today his lawyer
7 came and did the same thing. They're all liars. You
8 can't believe anything they said.

9 Now, one of the questions Mr. Kaplan asked you is
10 along the lines of would you make an important decision
11 in your life based upon the testimony of any one of
12 these witnesses?

13 We don't want you to do that. We're not asking you
14 to do that, because this isn't the case -- this is not a
15 case where it's just Mr. Folks and one witness for the
16 government. It is all of the witnesses who told you the
17 same story over and over again about the abuse and
18 exploitation they were subjected to by Mr. Folks. We
19 are relying on all of those witnesses together telling
20 that same story, and we are relying upon the
21 extraordinary images that Mr. Folks himself kept in
22 little encyclopedias of photographs of each woman in
23 sexually compromised positions, and those -- those
24 videotapes, which if Mr. Folks had not videotaped what
25 he did and kept it, it would be almost too incredible to

1 believe what happened.

2 Now, I want to follow up on a few of the points
3 made by Mr. Kaplan. Mr. Kaplan said -- started out by
4 saying, well, part of this is a cultural thing. It's a
5 cultural difference because of the world that Mr. Folks
6 and these women lived in is different from the world
7 that we live in.

8 First of all, the law says what you can do and what
9 you can't do, not the culture that you are in, and under
10 the law, Mr. Folks can't do the things he did to those
11 women.

12 Second of all, just because those various women who
13 came in here -- and they were not happy about having to
14 do it and told you about the low points in their lives.
15 Just because they had suffered and lived through bad
16 things before, and then, it doesn't mean that it's right
17 to make them continue to do that and to prolong that
18 suffering, because it's not right, no matter what
19 culture you're in. You don't get peed on and have that
20 other stuff that Mr. Folks was doing.

21 Mr. Kaplan told you that Chrissy -- you couldn't
22 believe what she said about the walnut video because she
23 wasn't in it. Well, that's wrong. Chrissy is in the
24 walnut video, and you see it in one of the first images
25 that you look at in the video. He said there's no

1 evidence of force in the video. Well, apparently he
2 thinks the three women subjected to the Walnut Challenge
3 are just having a grand old time, but you saw, when he
4 is bending over Victoria, in the video that we
5 recovered, and she tries to stand up, he says, "I didn't
6 tell you to stand up yet."

7 Well, he doesn't need force because he has such
8 control that all he has to do is say bend over and she
9 complies, because that's the regime that he had
10 established.

11 Counsel told you, well, the walnut video, the
12 Hannah retaliation video, the urination video, they
13 should stand alone and have no relevance to the case.
14 Well, that's just nonsense, isn't it? Because those
15 videos are paradigmatic examples of what he did to those
16 women. He videotaped the control and manipulation he
17 had over them and their incredible willingness given the
18 way he treated them and had conditioned them and groomed
19 them to do those things. They're right in the middle of
20 the case. They show the pattern of conduct that you
21 heard about in many other ways as well.

22 Counsel said no one could not feel sympathy for
23 them. Well, I'm sure that you all did hearing those
24 stories about how they grew up, the -- I mean, Mary's
25 arms were too -- Danielle's arms were too terrible to

1 think about and not feel sympathy for, and the other
2 stories about half a dozen foster homes, drug addict
3 parents, fathers teaching you how to shoot up heroin
4 intravenously and then bringing you to Donald McFarlan.
5 They're almost too tragic to think about. However,
6 there is one person whom we submit there's really no
7 indication that he had any sympathy for them.

8 Counsel said, well, there's very little
9 corroboration. And I mentioned before that we're not
10 counting on any one of these women. This is not a he
11 said, she said and there's-one-on-each-side case. And
12 you will -- you should regard the testimony of the women
13 carefully.

14 At the time this was happening, they were drug
15 addicts. You should think carefully about their
16 credibility. However, the pattern that you heard about
17 over and over from woman after woman was consistent and
18 concerning.

19 I mean, you heard as to whether the defendant ever
20 posted on Backpage; well, he said that never happened.
21 "I didn't post on Backpage. They did all that." Well,
22 Mandy testified that he posted her. Keisha testified
23 that he posted her. Katelynn testified that he posted
24 her. Jasmine testified that he posted her. Danielle
25 testified that he posted her. And Ayla testified that

1 he posted her. I mean --

2 Then as to the question of did he ask any of the
3 women to prostitute, well, he said no, he is just trying
4 to be sort of a helpful father figure. "I wouldn't
5 teach them how to prostitute."

6 Mandy testified that he taught her how to
7 prostitute, and so did Keisha, Katelynn, Jasmine,
8 Danielle and Ayla.

9 And what about the 50/50 earnings? Remember that?
10 He says, well, that never happened. "I just -- all I
11 wanted was a little gas money." I mean, right on the
12 face of it, why go through all this trouble for -- if
13 all you are getting out of it is gas money? I mean, you
14 gotta be an awfully big Good Samaritan, but what kind of
15 Good Samaritan is peeing on women?

16 In any event, as to the 50/50 business, although he
17 said, well, that's not true, Mandy testified that it was
18 50/50, Keisha 50/50, Katelynn 50/50. Jasmine said he
19 got all of her earnings. Ayla said it was 50/50. And
20 then the defense's own witness, Brittany Barber, when
21 she came in, said that she was prostituting for him, she
22 said, yeah, she gave him 50/50. That was the deal they
23 had.

24 And then you also know, because Brittany Barber
25 told you, the defense witness, as well as the government

1 witnesses, that although it started out 50/50, it very
2 quickly became 0/100, because the 50 percent of the
3 prostitution earnings that the women were allowed to
4 keep they then turned around and gave to the defendant
5 to buy drugs. And so he is getting a hundred percent.

6 The defense said that Mr. Folks would have no -- no
7 reason not to let them go and he could care less whether
8 the women were working for him or they went on their
9 own.

10 Really? A hundred percent of their earnings,
11 multiple prostitutes having five, 10 or more dates a day
12 at a hundred of \$200 apiece, and he is getting all the
13 money? I think that's someone who doesn't want all
14 these people to just leave.

15 And, you know, the -- him getting a hundred
16 percent, testified woman after woman after woman,
17 including defense witness Brittany Barber. So, you
18 know, that's gotta be corroboration, even setting aside
19 the digital and imagery evidence.

20 Now, the defense is relying heavily in claiming
21 that everyone's a liar in the testimony of Mr. Folks,
22 and my colleague touched on that briefly during his
23 closing, but I want to go into it a little more because
24 they're leaning on it so heavily.

25 A few things: First of all, counsel, my colleague,

1 mentioned the difference in the demeanor between Mr.
2 Folks and the others, the other multiple women. Folks
3 is a salesman. He sells drugs. He sells women. And
4 now he is trying to sell you. His demeanor was easy and
5 glib. Counsel would say, "Well, tell me about Keisha,"
6 and he'd pause for a moment, and then you just get a
7 torrent of words about everything about Keisha which
8 neatly fit into his versions. "She was a drug addict.
9 She was a prostitute. She was a liar. But not me, I
10 was -- I was a Good Samaritan."

11 So, remember, Keisha testified that -- and
12 consistent with other women who remembered it happening,
13 like Katelynn and Mandy, that she met the defendant
14 before her 18th birthday and was posted up and
15 photographed and whatnot, and in the defendant's
16 testimony, he says, "No. Actually, I met her then, but
17 it wasn't until the day she turned 18. It was on her
18 birthday when -- that's when she agreed to come and --
19 asked me to prostitute and took pictures." An
20 astonishing coincidence.

21 Contrast that sort of glib, easy demeanor that you
22 saw from the defendant on the stand, who found it -- so
23 effortlessly described how he was innocent in all
24 regards, contrast that with some of these victims. They
25 did not want to be here. They were reluctant. They

1 were frightened. They were tearful. I think every one
2 of them at some point, when we felt obligated to ask
3 them about some of the terrible things they went
4 through, shed tears.

5 You will recall Chrissy had always refused to talk
6 about one of the things that happened with her. And
7 when the defense called her back, well, my colleague
8 raised that with her and said, "Isn't there something
9 you always wanted to talk about?" Remember her demeanor
10 on that? She did not want to talk about that. It was
11 very emotional for her. She, you know, eked out that it
12 had involved a sexual assault by the defendant. She was
13 mortified. And when pressed, she eked out that, yes, it
14 resulted in bruises on her body. She didn't want to
15 tell you that. It was not easy for her. There was no
16 glibness in that testimony.

17 You contrast the defendant's demeanor on the stand
18 yesterday with some of the testimony that we have heard
19 from the victims, and they are a lot more credible than
20 he was. So there's that.

21 Note that the defendant, in talking about his
22 interactions with the various women, corroborated
23 himself a lot of what they said about dates, times and
24 places. So, you know, the indictment has got, you know,
25 2013 here and 2012 there and 2015. He said, yeah, no,

1 he did have interactions with those women on that date.
2 He mentioned the motels. The Motel 6. He is at motels
3 a lot of the time. So he corroborated a lot of what
4 they said about where they were when it happened and
5 that there was prostitution going on. The only thing he
6 said they were lying about was any of his involvement.

7 The defendant, also on the stand, was inconsistent
8 on multiple things. You know, he said initially on
9 direct examination by his lawyer -- he said, "Well, no
10 one -- no one bagged drugs for me. Those were lies,"
11 that there were those bagging parties going on where
12 they had to bag up the heroin and crack for street-level
13 distribution. "I did my own bagging."

14 But then later on cross examination, he had to
15 concede, well, no, women did. He did have women bag for
16 him, just not those women, Mary and Mandy. They didn't
17 bag. They worked for him, but they didn't bag.

18 He also direct testified that he was not
19 responsible for those four undercover buys. "Those were
20 something that Mandy was doing on her own because she
21 was selling drugs for all kinds of people, not me." But
22 on cross examination, after considerable effort, he
23 conceded that, well, yes, he did arrange all four of
24 those buys after he heard his voice on the phone
25 arranging those buys. Another inconsistency.

1 He also testified and his lawyer argued today that
2 he was always respectful to these women, and I just
3 submit to you that is just preposterous in view of the
4 things that he was doing to them and the things he
5 videotaped himself doing to them.

6 Mr. Folks on the stand also made a lot of just
7 improbable claims. For example, his explanation of why
8 he had all these photographs was he was in the photo
9 business. He was in the -- part of the pornography
10 industry, and that's why he had collected all these
11 photographs. And he didn't have anything to do with
12 these Backpage ads. He would just copy some of
13 the photographs into his computer and collecting these
14 photographs.

15 On cross examination, well, that didn't turn out
16 completely accurate, because you will recall Exhibit 141
17 is this menu of sex acts showing that that's what he had
18 in mind at the time, not just collecting photographs.
19 Blow job, pussy, anal, date, public, body rubs,
20 threesome, foursome, et cetera. So that was improbable.

21 Also improbable was his claim that the drugs
22 recovered from that white van on the January 20, 2016,
23 car stop, those were not his. As my colleague
24 mentioned, that doesn't make any sense because there are
25 only four people in the car. The driver's the one that

1 told the police to stop them because there would be
2 drugs in the car. The two others worked for Folks, so
3 Folks admitted that he was a drug dealer selling heroin
4 and crack cocaine. They're not his drugs? Really?

5 Generally, you know, Folks collected a harem of
6 troubled, desperate, young female drug addicts, and the
7 idea that them prostituting and him giving them heroin,
8 that nothing coercive was going on, and he was really
9 just trying to be helpful, we think that's very
10 improbable.

11 And then recall the testimony about whether they
12 benefited equally. You know, Mr. Kaplan, as his
13 advocate, had urged in selecting the jury that everyone
14 benefited equally in this case, and one might have
15 thought that Folks would say, "Well, you know, not
16 really. I just did some things I shouldn't have done,
17 and I'm sorry, but, you know, it wasn't -- wasn't
18 trafficking" or something like that, but, no. He says,
19 "Oh, we did benefit equally. Those -- those young women
20 that I was urinating on as I videotaped it happening,
21 they benefited equally. And the women who -- who I made
22 bend over and stuff walnuts up their anuses, they
23 benefited equally. Everyone benefited equally." In
24 fact, I think he even said, "Some of them benefited more
25 than I did." Well, that's crazy.

1 We talked -- counsel -- my associate talked very
2 briefly about the respective motives. This defendant
3 has a strong motive to persuade you that he is a great
4 guy and completely innocent and all those women are
5 lying hussies, because he doesn't want to go to jail.

6 By contrast, a lot of those young women -- although
7 Mr. Kaplan said, geez, they were afraid of being
8 charged, they did not want to be here. I don't know if
9 you remember the way Mary P. -- well, there's the -- the
10 tears that you saw, but I don't know if you remember
11 Mary P. walking in the courtroom. Chrissy was the same
12 way. This is the last thing they wanted to do. It was
13 not easy for them, and they were brave to do it.

14 And lastly, the weight of the evidence in this
15 case: As I said this is not a one-fellow he said,
16 one-woman she said case. There is a long litany of
17 consistent testimony against this defendant, and, you
18 know, the defense can nitpick here or there things that
19 each one got wrong. 99 percent of it is consistent.

20 So we didn't think that Mr. Folks' testimony was
21 very credible, and because of that, the heavy reliance
22 on it that his lawyer is now using doesn't carry much
23 weight.

24 Now, I'm down to a few other things. I am going to
25 try to wrap up before noon.

1 Folks's lawyer criticized my colleague, Miss
2 Savner, for getting with Keisha the wrong number of bags
3 that she stole. Matt said it was five bundles. Counsel
4 is correct; it was five bags, which makes it all the
5 more remarkable how upset Folks was by it and the
6 retribution he exacted from her.

7 You heard several witnesses describe that. Even
8 Lori Crawford remembered that happening. And Keisha
9 testified about it. And you will recall she was not
10 that happy to see that picture of the dumpster by the
11 graveyard because that's where Folks bent her over and
12 made her pay for that theft and then told her, "You work
13 for me again until you earn me back that money." The
14 fact he would do that over five bags is pretty
15 extraordinary.

16 Counsel said that Danielle never testified that she
17 saw a gun. Well, she did. I hope you remember that.
18 She said that she goes in the motel room and there's the
19 condom in the loo, and Mandy's waiting there, and she
20 turns around, Folks is in front of the door and flashes
21 the gun, the gun that so many other witnesses also saw
22 and described him keeping nearby.

23 Counsel says, well, why wouldn't Mandy just leave?
24 Really? Folks, six-foot-four, athletic, a fighter as he
25 described it, he is the violent one, and he has got a

1 gun? Mandy -- Danielle, what, is she about
2 five-foot-three, as Matt said, 90 pounds soaking wet.

3 Counsel said, well, what about that text afterwards
4 where Mandy -- where Danielle tested him, "I want to
5 work for you again"? Well, I don't know what she meant
6 by that. Maybe she was desperate enough to go back into
7 prostitution because she needed drugs. What did she
8 say? "I want to work for you." She's the employee; he
9 is the boss.

10 Counsel said Katelynn was not corroborated, she
11 lied about everything. That's one of the reasons we put
12 Jasmine on the stand is because she did corroborate
13 Katelynn. Katelynn says she was working with a woman
14 named Mindy, didn't know her real name. Mindy's
15 Jasmine. She came in and testified about what was going
16 on back then.

17 Counsel said there was no testimony that his client
18 ever put his hands on Jasmine? Yeah, there was. She
19 said he grabbed her by the throat when he got mad at her
20 once. He said that one of the -- she said that one
21 episode with anal sex -- it seems it's something he
22 wants to do with every female -- was so violent and
23 painful to her that she was bleeding and crying. A
24 little physical force there too.

25 Counsel said that, well, Ayla lied about

1 everything. Of course he says that everybody -- all the
2 witnesses lied about everything. But on Ayla, you know,
3 one of the things she did was she gave a false name to
4 the police. Well, I think we heard Mr. Folks yesterday
5 say that he gave a false name to the police.

6 Counsel said why does the defense have to bring out
7 these lies by Ayla? You know, excuse me, the government
8 brought out those lies by Ayla, you know, the false
9 cancer lie, the false statement lie. That was part of
10 the direct examination.

11 You know, counsel said Chrissy lied about
12 everything. I thought that the cross examination of
13 Chrissy, when they called her yesterday, was pretty
14 compelling because most of what she told, almost all of
15 what she told the police during that initial stop way
16 back when was dead on; and, yes, she said she wasn't
17 afraid, but then you had that text, the last bagging
18 session she went to at Uncle Marty's house where Folks
19 is there, and she is like, "Oh, my God, Folks is here."
20 Well, she was scared. She may not have wanted -- may
21 not have wanted to admit it at the time. And then, as I
22 won't describe to you again, her testimony about what he
23 did to her.

24 Counsel said Ariel Otero was very credible. Oh,
25 was she? I mean, she is living with the defendant when

1 they're winding up at 103 North Union. And then when
2 the defendant moves to Danielle Degenhardt's, she moves
3 with him. She is living there when he is arrested.
4 She's then having all these phone calls with him from
5 jail. I think that evidence suggests that those two
6 were pretty tight, and in any event, remember Ariel
7 testifying that she had no idea that drugs were being
8 trafficked out of the 103 North Union house. And that,
9 yes, well, she went out for short walks with Mandy
10 regularly, but she didn't know what was happening, and
11 they would go their own way. Well, that lacked
12 credibility.

13 And then recall that Mr. Folks yesterday testified
14 as to why he suspected Mary P. for stealing the drugs
15 out of the stash out of the car parked outside. He
16 said, well, there were only a few people that knew about
17 that stash, and they were Mary and Mandy and Ariel.
18 Well, which is it? Does she not know about the drug
19 dealing or, as Mr. Folks now says, she did know about
20 the drug stash?

21 Brittany Barber. I think she was -- she was
22 credible in some of the things she said, because she
23 admitted on cross that she was prostituting for the
24 defendant, and he was getting a hundred percent of her
25 earnings because he was getting the 50 percent off the

1 top, and then he was getting the other 50 percent for
2 heroin.

3 Recall that she also said that -- that -- because
4 she finally got clean in 2018, says that when you are an
5 addict, you will do anything for drugs, something that
6 was echoed by the remaining defense witness, Emily
7 Lasell. She said you're not really making decisions
8 when you are a heroin addict.

9 On Hannah, the defense counsel got several things
10 wrong, and you will know when you hear the judge's
11 instructions on this. First, he said that -- that --
12 you know, that his client didn't know she was under 18.
13 Well, he doesn't have to know that she was under 18.

14 He also repeatedly said that she was fairly mature
15 in her physical development so that, you know, you
16 wouldn't suspect she was under 18. Well, that's not the
17 law either.

18 The law is, as the Court will instruct you, that a
19 defendant dealing with a minor, if he had the
20 opportunity to observe her -- and this defendant had her
21 strip down to her panties and was telling her how to
22 pose in those photographs and I think admitted,
23 consistent with the testimony of Jasmine, that he took
24 pictures of her. So on this issue of whether he knew
25 she was under 18 or not, refer to the judge's

1 instructions.

2 Now, as to the posting of that, counsel said, well,
3 it wasn't Mr. Folks that posted that. Well, the other
4 three women in the room are all Folks's prostitutes, and
5 he has found -- he has got this new, young baby-sitter
6 that he has met because she showed up for a babysitting
7 gig with Jasmine. Folks makes the pitch. Second time
8 she comes over, he gets her to undress. He gets her to
9 pose. He gets her to let herself be photographed, and
10 then, within 30 minutes -- and he photographs her --
11 within 30 minutes, those photos are up on a Backpage
12 post.

13 Now, if he photographed her on his cell phone,
14 which must have been what was going on, or his tablet,
15 whatever digital device he had with him at the Motel 6
16 where this is happening, then he must have transferred
17 those photos -- either he posted her up, as he does with
18 everybody else, or he transferred those photos to
19 someone else who posted her up awfully fast, because she
20 is up on Backpage within 30 minutes.

21 You will recall that one of those Backpage posts,
22 the narrative said you could have any one of these four
23 women. Well, one of those four women was Hannah. She's
24 being offered up to prostitute.

25 Counsel urged that, well, there was no conspiracy

1 with McFarlan. Well, seems unlikely since both McFarlan
2 and Folks said that McFarlan repeatedly came up from New
3 York with drugs -- bulk drugs to sell. McFarlan says
4 five or six times; Folks says two or three times.

5 That sounds like a conspiracy, but set aside
6 McFarlan. I mean, you have got all this -- described as
7 a harem, but all these women acting as runners for Folks
8 because he doesn't want to be actually on the streets
9 doing the hand-to-hands. So they're doing it for him.
10 I mean, Mandy said she did it. There was testimony that
11 Hannah did it. There was testimony about that from
12 various witnesses, including Lori Crawford.

13 And so those runners are conspiring in this
14 drug-trafficking operation, and also the baggers. I
15 mean, we heard over and over again about bagging-up
16 parties and the way you did it with the razor blades and
17 the straws and the folded cards and all the little
18 baggies. Both Mary and Mandy described how that
19 operated.

20 The baggers are part of the conspiracy as well.
21 Now, Folks says in his testimony, "Well, Mandy and Mary
22 never bagged for me, but other people did." Well, those
23 other people are conspirators bagging it up for resale.

24 You know, just briefly on the gun case, Folks --
25 Folks testified yesterday that when the police stopped

1 his vehicle, which he thought was some kind of setup,
2 maybe he had been framed, he told them that they
3 wouldn't find any fingerprints on that gun. And he told
4 you that, well, he had no idea there was a gun in the
5 car. Well --

6 MR. KAPLAN: Judge, may we approach, please?

7 THE COURT: I -- this is -- this is summation,
8 and unless you have something extraordinary, I think --

9 MR. KAPLAN: I think --

10 THE COURT: -- we should let him finish.

11 MR. DARROW: Thank you, your Honor.

12 So that was a little inconsistent, because if you
13 don't even know there's a gun in the car, how do you
14 know your fingerprints aren't on the gun? And when I
15 pressed him on cross, he said, "Oh, no, I told them that
16 later after they are all -- the search warrant was being
17 executed." Tried to do a little quick step there.

18 But you heard testimony by witness after witness
19 after witness about Folks always having a handgun nearby
20 and using it when he wanted to intimidate somebody or
21 threaten somebody.

22 I'm trying to wrap up with some more thematic
23 issues here.

24 This fellow, we submit, located, recruited and
25 exploited the most vulnerable, marginal people in our

1 society. Once he had them, he wrung out of them every
2 dollar and every advantage he could get. The ones who
3 were allowed to leave were those that he was done with,
4 like Danielle who was so ravaged that she couldn't get a
5 john anymore; like Lori, who when she -- when he did her
6 the service of driving her to drug rehab, you know,
7 she's leaving her home, for him to turn into Lori's
8 place and operate out of for a month while she is down
9 at Valley Vista.

10 I won't go on about the fraud, force, coercion; you
11 have heard about that, and you have heard a lot of
12 evidence. The fraud, the fake romancing, getting these
13 women to fall in love with him, the tattoos with his
14 name, the force, the beatings. Many of those are
15 corroborated -- you heard one -- one person -- even Lori
16 said she saw Ayla with bruises; others said she saw --
17 they saw Ayla get hit, they saw Ayla come out of the
18 bathroom crying after the defendant had a one-on-one
19 with her. The -- and the unwanted sex, too.

20 Mr. Folks weaponized sex. This was not sex in the
21 "making love" sense of the word. This was him having
22 his way with these women that didn't want to do it. And
23 again and again you heard descriptions of the way that
24 went, from Jasmine bleeding to Danielle being told, as
25 she gagged and cried, to take it all. You know, that

1 was something that he did. It was one of the degrading
2 ways that he did to exercise control over these women
3 and to subjugate them.

4 In addition to the heroin addiction, we submit that
5 by the time Folks got you -- had found you, gets you to
6 take your clothes off, gets you photographed, gets you
7 up on Backpage, gets you selling yourself to others, and
8 gets you in these -- this -- these hard sexual
9 encounters with him, you don't have a lot left to push
10 back with, and that's one of the reasons why many of
11 these women never said no to him, because they were
12 afraid to and they'd seen others learn the hard way that
13 if you say no, there's going to be a problem.

14 You have heard all the evidence, and you have heard
15 the sad testimony of seven women about what happened
16 with him. We hope you're not going to let this go by.
17 There's a lot of evidence in this case from the digital
18 evidence and the videotapes, which -- you know, counsel
19 even attacked Professor Epp for turning on the computer.
20 Well, you know, she is in the middle of the case. From
21 the get-go, she gets a federal search warrant. She
22 turns on the computer. It has no effect on the walnut
23 video, the pee videos, all these images. There's never
24 been any testimony that it affected that stuff.

25 We ask you to find this defendant guilty of all the

1 charges, as he is. Thank you.

2 THE COURT: All right. I am going to turn the
3 husher on at this point and would invite counsel to come
4 forward.

5 (The following was held at the bench.)

6 THE COURT: Okay. You had some objection?

7 MR. KAPLAN: Judge, I never interrupt anyone
8 when we are doing a closing.

9 THE COURT: Yeah, I've seen you interrupt.

10 MR. KAPLAN: But Mr. Darrow said some things
11 that concern me. One, he kept referring to the women as
12 victims.

13 MS. SEN: It was degrading.

14 MR. KAPLAN: And we are not supposed to do
15 that. These are not -- they're not victims. They may
16 be complaining witnesses, but they are not victims.

17 THE COURT: Yeah. Okay.

18 MR. KAPLAN: Secondly, and my law expert tells
19 me -- I don't want to take the blame for this if I'm
20 wrong, but my law expert tells me that Folks does have
21 to know that Hannah was 18 or not; in other words, he
22 had reasonable opportunity to observe that she was 18 or
23 not. So is it true that he doesn't have to know that
24 she --

25 THE COURT: He doesn't have to know.

1 MR. KAPLAN: Just have a reasonable
2 opportunity?

3 THE COURT: It is -- it is in the disjunctive.
4 It's either know or act in reckless disregard or if you
5 have a reasonable opportunity to see her. And case
6 law -- cases really are very broad on that last
7 category. So you have got an exception to that. If you
8 think that that statute requires knowledge, then you are
9 in good shape because he is not being instructed on --
10 they are not being instructed on that.

11 MR. KAPLAN: The other thing I remembered is
12 Mr. Darrow said that my client was stopped with the
13 firearm; he said, "You won't find any fingerprints on
14 it." And he asked my client about that yesterday on
15 cross. My client said, "Yes, I said that like 20 months
16 later. It was way after the event." He didn't know the
17 gun was in the glove compartment.

18 THE COURT: I thought there had been some
19 earlier reference to that? What is that?

20 MR. DARROW: My memory -- I mean, of course
21 these are just arguing about facts which are left to the
22 jury, and the Court will instruct the attorneys'
23 arguments are not facts, but my memory was, as I said,
24 that he -- that Folks testified about that incident,
25 that he said, "I told them that those were not my

1 fingerprints on the gun," and then when I -- when I
2 pressed him, he -- as to how he could not know that
3 there were no fingerprints on the gun when he thought
4 there was no gun, he said, "Oh, oh, that was later," and
5 that's all I said.

6 THE COURT: Well, it's facts to be determined
7 by the jury.

8 So the first reference to victim, clearly there's a
9 court order out that these were not to be referred to in
10 the counts as victims. I don't think it's sufficient to
11 say that an argument, in a colloquial sense, he is
12 describing these individuals as being victims of the
13 defendant's --

14 MR. KAPLAN: Yeah, but, I'm sorry, it's not
15 really colloquial. When you are describing them as
16 victims, you are saying these are women who had
17 suffered, been abused by the defendant. That's what
18 that word means. I mean, that's what I would think of
19 if someone --

20 THE COURT: Yeah, that's what their argument
21 is.

22 MR. KAPLAN: I know --

23 THE COURT: I mean, that's what -- that's what
24 he's arguing.

25 MR. KAPLAN: Well, when you say they're

1 victims, then it's like a foregone conclusion. He is
2 telling the jury that they're victims, that this is
3 what -- I mean, rather than he is saying they're
4 individuals who would say this is what happened.

5 THE COURT: Well, he is describing these
6 individuals being treated horrendously; i.e.,
7 victimized.

8 MR. KAPLAN: I don't want to -- I mean, I
9 don't want to go over the subject.

10 THE COURT: I appreciate it. Right. So --

11 MR. DARROW: Just briefly. It hadn't occurred
12 to me that -- that not calling anyone a victim would
13 apply in argument. And --

14 THE COURT: It's -- I am not going to instruct
15 the jury to disregard it, so -- and there's nothing
16 improper about using that in argument, in light of the
17 context in which you are arguing; that is, they're being
18 subjected to abusive conduct.

19 MR. DARROW: Thank you.

20 THE COURT: All right. So let's give them
21 until one o'clock? Have them come back at one? Okay?

22 MR. DARROW: Okay.

23 (The following was held in open court.)

24 THE COURT: All right. Obviously the evidence
25 is closed. The arguments are over. It's my chance to

1 say something. That's the charge. I am going to read
2 to you the charge at one o'clock; give you 45 minutes --
3 almost 50 minutes for lunch. I'd ask that you come back
4 at one. We'll give you the charge, and then the case
5 will be submitted to the jury for consideration.

6 All right? See you back at one o'clock.

7 (Court was in recess at 12:13 p.m.)

8 (The following was held in open court with the jury
9 present at 1:10 p.m.)

10 THE COURT: Good afternoon and welcome back.
11 I think you all have a copy of the jury charge so that
12 you can read along with me. I have learned in just a
13 few years of experience here that jurors absorb more if
14 you hear as well as read the instructions.

15 I have got an obligation to read the instructions
16 to you. You just -- historically it used to be that the
17 judge would read the instructions, you would not have
18 instructions, you wouldn't even take the instructions
19 into the jury room, and you'd have to try and figure out
20 what the judge said. And obviously it takes -- you
21 know, this will take approximately an hour. So, please
22 read along with me.

23 Members of the jury:

24 Now that you have heard the evidence and arguments,
25 it is my duty to instruct you on the law. It is your

1 duty to accept these instructions of law and apply them
2 to the facts as you determine them.

3 By the way, sometimes I read incorrectly, and if I
4 read incorrectly, follow what I wrote as opposed to what
5 I said. It's a disability that I have developed. But
6 anyway. Just make sure that you follow what is written
7 as the instruction.

8 Mr. Folks is on trial here on 14 counts which are
9 set out in a written indictment. I would like to remind
10 you again of the function of an indictment. An
11 indictment is a formal way to accuse a defendant of a
12 crime prior to trial. Mr. Folks is not on trial for any
13 act or any conduct not specifically charged in the
14 indictment.

15 An indictment is not evidence. An indictment does
16 not create any presumption of guilt or permit an
17 inference of guilt. It should not influence your
18 verdict in any way other than to inform you of the
19 charges against the defendant. The defendant has
20 pledged not guilty to the indictment. You have been
21 chosen and sworn as jurors in this case to determine the
22 issues of fact that have been raised by the allegations
23 of the indictment and the denial made by the not guilty
24 plea of the defendant. You are to perform this duty
25 without bias or prejudice against the defendant or the

1 prosecution.

2 I will now instruct you concerning the issues of
3 law which apply generally to the trial of this case.

4 REASONABLE DOUBT AND PRESUMPTION OF INNOCENCE

5 The law presumes that the defendant, Brian Folks,
6 is innocent of the charges against him. The presumption
7 of innocence lasts throughout the trial and during your
8 deliberations. The presumption of innocence ends only
9 if you, the jury, find beyond a reasonable doubt that
10 the defendant is guilty. Should the government fail to
11 prove the guilt of the defendant beyond a reasonable
12 doubt, you must find the defendant not guilty.

13 The government must prove the defendant guilty
14 beyond a reasonable doubt. A reasonable doubt is a
15 doubt that a reasonable person has after carefully
16 weighing all of the evidence. It is a doubt that would
17 cause a reasonable person to hesitate to act in a matter
18 of importance in his or her personal life. Proof beyond
19 a reasonable doubt must, therefore, be proof of such a
20 convincing character that a reasonable person would not
21 hesitate to rely and act upon it in the most important
22 of his or her own affairs. A reasonable doubt is not a
23 whim, speculation or suspicion. A reasonable doubt must
24 arise from a lack of evidence. It is not an excuse to
25 avoid the performance of an unpleasant duty. And it is

1 not sympathy.

2 In a criminal case, the burden is at all times upon
3 the government to prove guilt beyond a reasonable doubt.
4 The law does not require the government to prove guilt
5 beyond all possible doubt; proof beyond a reasonable
6 doubt is sufficient to convict. This burden never
7 shifts to the defendant, which means that it is always
8 the government's burden to prove each of the elements of
9 the crime charged beyond a reasonable doubt. The law
10 never imposes upon a defendant in a criminal case the
11 burden or duty of calling any witnesses or producing any
12 evidence. A defendant is not even obligated to produce
13 any evidence by cross examining the witnesses for the
14 government.

15 If, after a fair and impartial consideration of all
16 the evidence against the defendant, you have a
17 reasonable doubt, it is your duty to find the defendant
18 not guilty. On the other hand, if, after fair and
19 impartial consideration of all the evidence, you are
20 satisfied of the defendant's guilt beyond a reasonable
21 doubt, you must vote to convict.

22 JURORS' EXPERIENCE AND SPECIALIZED KNOWLEDGE

23 Anything you have seen or heard outside the
24 courtroom is not evidence and must be disregarded
25 entirely. It would be a violation of your oath as

1 jurors to consider anything outside the courtroom in
2 your deliberations. But in your consideration of the
3 evidence, you do not leave behind your common sense and
4 life experiences. In other words, you are not limited
5 solely to what you see and hear as the witnesses
6 testify. You are permitted to draw, from facts which
7 you find have been proved, such reasonable inferences as
8 you feel are justified in light of the evidence.
9 However, if any juror has specialized knowledge,
10 expertise or information with regard to the facts or
11 circumstances of this case, he or she may not rely upon
12 it in deliberations or communicate it to other jurors.

EVIDENCE

14 You have seen and heard the evidence produced in
15 this trial, and it is the sole province of the jury to
16 determine the facts of this case. The evidence consists
17 of the sworn testimony of the witnesses, any exhibits
18 that have been admitted into evidence, and all the facts
19 that have been admitted or stipulated. You should weigh
20 all the evidence in the case. After weighing all the
21 evidence, if you are not convinced of the defendant's
22 guilt beyond a reasonable doubt, you must find him not
23 guilty. Your verdict must be based solely on the
24 evidence introduced at trial, or the lack thereof.

25 Evidence may be direct or it may be circumstantial

in nature. An example of direct evidence is a statement by a witness about his or her observation of an event. Circumstantial evidence is evidence which permits a jury to draw an inference relevant to the case. For example, if I ring my friend's doorbell and no one answers, I may infer that she is not at home even though I have no direct evidence of her whereabouts.

STRICKEN TESTIMONY, ATTORNEYS' STATEMENTS,

AND THE COURT'S RULINGS

I caution you that you should not consider or base your decision upon any testimony or exhibit that has been excluded or stricken from the record. Likewise, the arguments of the attorneys and the questions asked by the attorneys are not evidence in the case. By the rulings the Court made in the course of the trial, I did not intend to indicate to you any of my own preferences or to influence you in any manner regarding how you should decide the case. The attorneys have a duty to object to evidence they believe is not admissible. You must not hold it against either side if an attorney made an objection.

CREDIBILITY OF WITNESSES

23 You as jurors are the sole judges of the
24 credibility of the witnesses and the weight of their
25 testimony. You do not have to accept all the evidence

1 presented in this case as true or accurate. Instead, it
2 is your job to determine the credibility or
3 believability of each witness. You do not have to give
4 the same weight to the testimony of each witness,
5 because you may accept or reject the testimony of any
6 witness in whole or in part. In weighing the testimony
7 of the witnesses you have heard, you should consider
8 their interest, if any, in the outcome of the case;
9 their manner of testifying; their candor; their bias, if
10 any; their resentment or anger, if any, toward the
11 defendant; the extent to which other evidence in the
12 case supports or contradicts their testimony; and the
13 reasonableness of their testimony. You may believe as
14 much or as little of the testimony of each witness as
15 you think proper. You may accept all of it, some of it
16 or reject it altogether.

17 The weight of the evidence is not determined by the
18 number of witnesses testifying. You may find the
19 testimony of a small number of witnesses or a single
20 witness about a fact more credible than the different
21 testimony of a larger number of witnesses. The fact
22 that one party called more witnesses and introduced more
23 evidence than the other does not mean that you should
24 necessarily find the facts in favor of the side offering
25 the most witnesses or the most evidence. Remember, a

1 defendant in a criminal prosecution has no obligation to
2 present any evidence or call any witnesses.

3 EXPERT WITNESSES

4 Certain witnesses testified as experts. An expert
5 witness is someone who has a special knowledge or
6 training in a particular subject area. An expert is
7 permitted to offer a professional opinion within his or
8 her field of expertise. As in the case of other
9 witnesses, you are the sole judges of the credibility of
10 the expert witnesses. You may consider the same factors
11 which guided your determination of the credibility of
12 other witnesses. In the case of an expert witness, you
13 may also consider their professional training;
14 experience; publications and awards, if any; and
15 standing and accomplishment within his or her field of
16 expertise.

17 LAW ENFORCEMENT WITNESSES

18 You have heard the testimony of law enforcement
19 officials in this case. The fact that a witness may be
20 employed by the federal, state or local government as a
21 law enforcement official does not mean that his or her
22 testimony is deserving of more or less consideration or
23 greater or lesser weight than that of an ordinary
24 witness.

25 At the same time, it is proper for defense counsel

1 to try to attack the credibility of a law enforcement
2 witness on the grounds that his or her testimony may be
3 colored by a personal or professional interest in the
4 outcome of the case.

5 It is your decision, after reviewing all the
6 evidence, whether to accept the testimony of a law
7 enforcement witness and to give to that testimony
8 whatever weight, if any, you find it deserves.

UNAVAILABLE WITNESSES

10 There are persons whose names you have heard during
11 the course of the trial but who did not appear here to
12 testify, specifically Hannah A. and Victoria L. These
13 witnesses were unavailable for trial. You should not
14 draw any inferences or reach any conclusions as to what
15 they would have testified to had they been called.
16 Their absence should not affect your judgment in any
17 way.

WITNESSES AND DRUG USE

19 There has been testimony by at least one witness
20 who was using drugs when the events they observed took
21 place. There is nothing improper about calling such a
22 witness to testify; however, testimony from such a
23 witness should be examined with greater care than the
24 testimony of witnesses who were not using drugs when the
25 events they observed took place because of the effect

the drugs may have had on that person's ability to perceive or describe the events in question.

ACCOMPLICES CALLED BY THE GOVERNMENT

4 You have heard witnesses who testified that they
5 were actually involved in planning and carrying out the
6 crimes charged in the fourth superseding indictment.

The law allows the use of accomplice testimony.

The testimony of accomplices may be enough in itself for conviction if the jury finds that the testimony establishes guilt beyond a reasonable doubt. However, accomplice testimony is of such a nature that it must be scrutinized with great care and viewed with a particular caution when you decide how much of that testimony to believe.

15 You should ask yourselves whether these alleged
16 accomplices would benefit more by lying or by telling
17 the truth. Was their testimony made up in a way -- in
18 any way because they believed or hoped that they would
19 somehow receive favorable treatment by testifying
20 falsely? Or did they believe that their interest would
21 be best served by testifying truthfully? If you believe
22 that the witness was motivated by hopes of personal
23 gain, was the motivation one which would cause him to
24 lie, or was it one which would cause him to tell the
25 truth? Did this motivation color his testimony?

WITNESSES' PLEA AGREEMENTS

In this case there has been testimony from government witnesses who pled guilty after entering into agreements with the government to testify. There is evidence that the government has promised to bring the witnesses' cooperation to the attention of the sentencing court.

8 The government is permitted to enter into this kind
9 of plea agreement. You, in turn, may accept the
10 testimony of such a witness and convict the defendant on
11 the basis of this testimony alone if it convinces you of
12 the defendant's guilt beyond a reasonable doubt.

13 However, you should bear in mind that a witness who
14 has entered into such an agreement has an interest in
15 this case different than an ordinary witness. A witness
16 who realizes that he or she may be able to obtain his or
17 her own freedom or receive a lighter sentence by giving
18 testimony favorable to the government has a motive to
19 testify falsely. Conversely, a witness who realizes
20 that he or she may benefit by providing truthful
21 testimony has a motive to be honest. Therefore, you
22 must examine his or her testimony with caution and weigh
23 it with great care. If, after scrutinizing his or her
24 testimony, you decide to accept it, you may give it
25 whatever weight, if any, you find it deserves.

1 FAILURE TO NAME A DEFENDANT

2 You may not draw any inference, favorable or
3 unfavorable, towards the government or the defendant on
4 trial, from the fact that certain persons who were not
5 named as defendants in the fourth -- let me start that
6 again.

7 You may not draw any inference, favorable or
8 unfavorable, towards the government or the defendant on
9 trial, from the fact that certain witnesses were not
10 named as defendants in the fourth superseding
11 indictment. The fact that these persons are not on
12 trial must play no part in your deliberations.

13 RECORDINGS

14 The government has offered evidence in the form of
15 audio recordings. This information may have been
16 gathered without the knowledge of all the participants.
17 The use of these procedures to gather evidence is
18 lawful, and the government is entitled to use the
19 evidence in this case. You should not consider the
20 method of gathering this evidence in your deliberations.

21 STIPULATION OF FACTS

22 The parties have stipulated to certain facts.
23 Specifically, the parties have stipulated that the
24 defendant, Brian Folks, had been convicted of a crime
25 punishable by a term of imprisonment exceeding -- that's

1 one year, prior to December 25, 2015. You should
2 consider this fact as established for purposes of the
3 trial. Because the parties have stipulated or agreed to
4 this fact, it is not necessary for the prosecution to
5 produce evidence to prove the fact.

6 BIAS, PREJUDICE AND EQUALITY BEFORE THE COURT

7 You are to perform the duty of finding the facts
8 without bias or prejudice toward any party. You are to
9 perform this duty in an attitude of complete fairness
10 and impartiality. You must not allow any of your
11 personal feelings about the nature of the crimes charged
12 to interfere with your deliberations or influence the
13 weight given to any of the evidence.

14 You may not consider the race, religion, national
15 origin, sex or age of the defendant or any of the
16 witnesses in your deliberations over the verdict or in
17 the weight to be given to any evidence.

18 This case is important to the parties and the
19 court. You must give it the fair and serious
20 consideration which it deserves.

21 The fact that the prosecution is brought in the
22 name of the United States of America entitles the
23 government to no greater consideration than that
24 accorded to any other party to a case. By the same
25 token, it is entitled to no less consideration. All

1 parties, whether government or individuals, stand as
2 equals before the court.

3 The question of possible punishment of the
4 defendant in the event of a conviction is not the jury's
5 concern and should not influence your deliberations.
6 Your function is to weigh the evidence in the case and
7 to determine whether the defendant is guilty beyond a
8 reasonable doubt solely upon the basis of such evidence.
9 If the defendant is convicted, the Court will consider
10 the issue of punishment in a separate phase of the case.

11 INSTRUCTIONS ON THE SUBSTANTIVE LAW OF THE CASE

12 Having explained the general guidelines by which
13 you will evaluate the evidence in this case, I will now
14 instruct you with regard to the law that is applicable
15 to your determinations in this case.

16 It is your duty as jurors to follow the law as
17 stated to you in these instructions and to apply the
18 rules of law to the facts that you find from the
19 evidence. You will not be faithful to your oath as
20 jurors if you find a verdict that is contrary to the law
21 that I give to you.

22 However, it is the sole province of the jury to
23 determine the facts in this case. I do not, by any
24 instructions given to you, intend to persuade you in any
25 way as to any question of fact.

The parties in this case have a right to expect
that you will carefully and impartially consider all the
evidence in the case, that you will follow the law as I
state it to you, and that you will reach a just verdict.

INTRODUCTION TO OFFENSES

6 The fourth superseding indictment charges 14
7 separate crimes, called counts, against the defendant.
8 Each count has a number.

9 Count 1 charges that the defendant knowingly and
10 willfully conspired with others between in or about May
11 2015 and March 2016 to distribute 100 grams or more of
12 heroin and 28 grams or more of cocaine base, which are
13 controlled substances.

Counts 3, 5, 8 and 9 charge the defendant on various dates in January 2016 and February 2016 knowingly and intentionally distributed heroin.

Count 7 charges that on January 20, 2016, the defendant knowingly and intentionally possessed heroin or cocaine base with the intent to distribute it.

20 Count 2 charges that the defendant, who was
21 previously convicted of a crime punishable by a term of
22 imprisonment exceeding one year, knowingly possessed a
23 firearm, namely a Beretta Model 92FS nine-millimeter
24 pistol, in and affecting commerce.

Counts 10, 11, 12, 13 and 14 --

1 Let me just instruct you that's interstate commerce
2 on the previous paragraph in Count 2.

3 Next, Counts 10, 11, 12, 13 and 14 charge that the
4 defendant knowingly, in or affecting interstate
5 commerce, recruited, enticed, harbored, transported,
6 provided, obtained, and maintained by any means the
7 person identified in each count, knowing or in reckless
8 disregard of the fact that force, threats of force,
9 fraud, and coercion would be used to cause that person
10 to engage in commercial sex acts.

11 Count 10 charges that the defendant did so with
12 respect to Katelynn C.

13 Counts 11 and 12 charge that the defendant did so
14 with respect to Keisha W. during two different time
15 periods.

16 Count 13 charges that the defendant did so with
17 respect to Danielle M.

18 Count 14 charges that the defendant did so with
19 respect to Ayla L.

20 Count 15 charges that the defendant knowingly, in
21 and affecting interstate commerce, recruited, enticed,
22 harbored, transported, provided, obtained, and
23 maintained by any means Hannah A., having had a
24 reasonable opportunity to observe Hannah A., and that
25 Hannah A. had not attained the age of 18 years and would

1 be caused to engage in a commercial sex act.

2 Count 16 charges that the defendant knowingly used,
3 or caused to be used, one or more facilities in
4 interstate commerce, namely the internet and cellular
5 telephones, with the intent to promote, manage,
6 establish, carry on, and facilitate the promotion,
7 management, establishment, and carrying on of an
8 unlawful activity, that is, a business enterprise
9 involving prostitution offenses, in violation of the
10 laws of Vermont, and thereafter performed, and caused to
11 be performed, acts to promote, manage, establish, carry
12 on and facilitate the promotion, management,
13 establishment and carrying on of such unlawful activity.

14 You should draw no inference from and attach no
15 meaning to the absence of Counts 4 and 6 from the
16 superseding -- fourth superseding indictment.

17 "ON OR ABOUT" AND "IN OR ABOUT" EXPLAINED

18 Each of the counts in the fourth superseding
19 indictment charges that the offenses were committed in
20 or about or on or about certain dates. Although it is
21 necessary for the government to prove beyond a
22 reasonable doubt that the offenses were committed on
23 dates reasonably near the dates alleged in the fourth
24 superseding indictment, it is not necessary for the
25 government to prove that the offense was committed

1 precisely on the dates charged.

COUNT 1

3 Count 1 of the fourth superseding indictment reads
4 as follows:

5 Between in or about May of 2015 and in or about
6 March of 2016, in the District of Vermont and elsewhere,
7 the defendants, Brian Folks, a/k/a Moe, a/k/a Moet Hart;
8 Donald McFarlan, a/k/a "G," a/k/a Ghost, and others,
9 known and unknown to the grand jury, knowingly and
10 willfully conspired to distribute heroin, a Schedule I
11 controlled substance, and cocaine base, a Schedule II
12 controlled substance.

With respect to defendants Brian Folks, a/k/a Moe and a/k/a Moet Hart, and Donald McFarlan, a/k/a "G" and a/k/a Ghost, their conduct as members of the conspiracy, including the reasonably foreseeable conduct of other members of the conspiracy, involved 28 grams or more of a mixture and substance containing a detectable amount of cocaine base and 100 grams or more of a mixture and substance containing a detectable amount of heroin.

ELEMENTS OF OFFENSE OF CONSPIRACY, 21 USC, SECTION 846

22 Count 1 charges that the defendant, Brian Folks,
23 engaged in a conspiracy with others to distribute heroin
24 and cocaine base. Title 21 of the United States Code,
25 section 846, as charged in Count 1 of the fourth

1 superseding indictment, makes it a federal crime for
2 anyone to conspire or agree with someone else to do
3 something which, if actually carried out, would be a
4 violation of section 841(a)(1). 841(a)(1) makes it a
5 crime for anyone to knowingly or intentionally
6 distribute a controlled substance. I instruct you that
7 heroin is a Schedule I controlled substance, and
8 cocaine base is a Schedule II controlled substance.

9 Under the law, a conspiracy is an agreement among
10 two or more persons to achieve an unlawful object, in
11 this case the carrying out of the crime of distribution
12 of heroin and cocaine base.

13 To prove the existence of a conspiracy, it is
14 sufficient to show that the conspirators came to a
15 mutual agreement to accomplish an unlawful act by means
16 of a joint plan or common design. Because the essence
17 of a conspiracy offense is the making of the scheme
18 itself, it is not necessary for the government to prove
19 that the conspirators actually succeeded in
20 accomplishing their unlawful plan.

21 Although the government alleged that the conspiracy
22 involved both cocaine base and heroin, you should only
23 find that the conspiracy involved -- you need only find
24 that the conspiracy involved one of these controlled
25 substances to find the defendant guilty. Please bear in

1 mind that your decision on this issue, as on all others,
2 must be unanimous. In other words, you must find
3 unanimously that the purpose of the conspiracy was the
4 distribution of heroin or cocaine base or both. If some
5 of you believe that the purpose of the conspiracy was
6 solely the distribution of heroin, and others of you
7 believe that the purpose was solely the distribution of
8 cocaine base, then you must find the defendant not
9 guilty of Count 1.

In order to return a verdict of guilty as to this count, the government must prove each of the following elements beyond a reasonable doubt:

13 First, that two or more persons, in some way or
14 manner, came to an agreement to try to accomplish a
15 common and unlawful plan, as charged in Count 1 of the
16 fourth superseding indictment; and

17 Second, that the defendant knowingly became a
18 member of such conspiracy.

FIRST ELEMENT - EXISTENCE OF AN AGREEMENT

20 The first element that the government must prove
21 beyond a reasonable doubt to establish the offense of
22 conspiracy is that two or more persons entered the
23 unlawful agreement charged in Count 1 of the
24 superseding -- fourth superseding indictment.

25 In order to prove this element, the government must

1 prove that there was a mutual agreement, either spoken
2 or unspoken, between two or more people to cooperate
3 with each other to accomplish an unlawful act.

4 You may find that the existence of an agreement to
5 violate the law has been established by direct proof.
6 However, since conspiracy may, by its very nature, be
7 characterized by secrecy, you may also infer its
8 existence from the circumstances of this case and the
9 conduct of the parties involved. Co-conspirators need
10 not be charged with the crime of conspiracy in order for
11 you to find that the defendant had an agreement with
12 other individuals to commit the illegal act charged in
13 the indictment.

14 SECOND ELEMENT - MEMBERSHIP IN THE CONSPIRACY

15 The second element that the government must prove
16 beyond a reasonable doubt to establish the offense of
17 conspiracy is that the defendant knowingly became a
18 member of the conspiracy.

19 If you are satisfied that the conspiracy charged in
20 the fourth superseding indictment existed, you must next
21 ask yourselves who the members of that conspiracy were.
22 In deciding whether the defendant was, in fact, a member
23 of the conspiracy, you should consider whether the
24 defendant knowingly joined the conspiracy. The
25 prosecution has the burden of proving that the defendant

1 participated in the conspiracy with the knowledge of its
2 unlawful purpose and with the specific intention of
3 furthering its business objective.

4 You are instructed that, while proof of a financial
5 interest in the outcome of a scheme is not essential, if
6 you find that a defendant had such an interest, that is
7 a factor which you may properly consider in determining
8 whether or not the defendant was a member of the
9 conspiracy charged in the fourth superseding indictment.

10 Before the defendant can be found to have been a
11 conspirator, you must first find that he knowingly
12 joined in the unlawful agreement or plan. The key
13 question, therefore, is whether the defendant joined the
14 conspiracy with an awareness of at least some of the
15 basic aims and purposes of the unlawful agreement.

16 The defendant's knowledge is a matter of inference
17 from the facts proved. In that connection, I instruct
18 you that to be a member of the conspiracy, the defendant
19 need not have known the identities of each and every
20 other member, nor need he have known about all the other
21 members' activities. Moreover, the defendant need not
22 have been fully informed as to all of the details or the
23 scope of the conspiracy in order to justify an inference
24 of knowledge on his part.

25 The extent of the defendant's participation has no

1 bearing on the issue of the defendant's guilt. A
2 conspirator's liability is not measured by the extent or
3 duration of his participation.

4 Indeed, each member may perform separate and
5 distinct acts and may perform them at different times.
6 Some conspirators play major roles while others play
7 minor parts in the scheme. The law does not require
8 that each participant in the conspiracy play an equal
9 role. Even a single act may be sufficient to draw a
10 defendant within the ambit of the conspiracy.

11 A conspiracy may continue for a long period of time
12 and may include the performance of many transactions.
13 It is not necessary that all members of the conspiracy
14 join it at the same time or leave it at the same time.
15 A member of the conspiracy may stop participating in the
16 conspiracy before the conspiracy ends and one may join a
17 conspiracy after it has already begun. Moreover, one
18 may become a member of the conspiracy without full
19 knowledge of all the details of the unlawful scheme or
20 the names, identities or locations of all of the other
21 members.

22 I want to caution you, however, that a defendant's
23 mere presence at the scene of an alleged crime does not,
24 by itself, make him a member of the conspiracy.
25 Similarly, mere association with one or more members of

1 the conspiracy does not automatically make a defendant a
2 member. A person may know or be friendly with a
3 criminal without being a criminal himself. Mere
4 similarity of conduct or the fact that they may have
5 assembled together and discussed common aims and
6 interests does not necessarily establish proof of the
7 existence of a conspiracy.

8 I also want to caution you that mere knowledge or
9 acquiescence, without participation, in the unlawful
10 plan is not sufficient. Moreover, the fact that the
11 acts of a defendant, without knowledge, merely happen to
12 further the purposes or objectives of the conspiracy
13 does not make the defendant a member. More is required
14 under the law. What is necessary is that the defendant
15 must have participated with the knowledge of at least
16 some of the purposes or objectives of the conspiracy and
17 with the intent of aiding in the accomplishment of those
18 unlawful ends.

19 "KNOWINGLY" AND "WILLFULLY" DEFINED

20 You have been instructed that to sustain a burden
21 of proof on Count 1, the government must prove that the
22 defendant acted knowingly and willfully. A person acts
23 knowingly if he acts intentionally and voluntarily and
24 not because of ignorance, mistake, accident or
25 carelessness. You may consider evidence of the

defendant's words, acts or omissions, along with all other evidence, in deciding whether the defendant acted knowingly.

4 Willfully means to act with knowledge that one's
5 conduct is unlawful and with the intent to do something
6 that the law forbids; that is to say, with the bad
7 purpose of disobeying or disregarding the law. The
8 defendant's conduct was not willful if it was of
9 negligence, inadvertence or mistake.

10 || AMOUNT OF DRUGS

If you find that the government has not proven beyond a reasonable doubt the elements that I have just described to you, you will indicate that you find the defendant not guilty of Count 1 on the special verdict form I will provide you. You will then answer no further questions on Count 1.

If you find that the government has proven beyond a reasonable doubt that the two elements that I have described -- that the government has proven beyond a reasonable doubt the two elements that I have described, then there is another issue you must decide with regard to Count 1. The special verdict form will set forth the questions you must answer.

Count 1 charges the defendant with conspiring to distribute 28 grams or more of a mixture or substance

1 containing a detectable amount of cocaine base and 100
2 grams or more of a mixture or substance containing a
3 detectable amount of heroin.

4 You should assess the amount of cocaine base and
5 heroin involved in the conspiracy with regard to the
6 defendant. The government does not have to prove that
7 the defendant directly handled or distributed the
8 particular quantities alleged, although you may consider
9 that evidence along with other evidence to assess the
10 quantity element.

11 The government can prove the defendant is
12 responsible for the quantity involved in a conspiracy in
13 three ways:

14 First, the government can offer evidence that
15 proves beyond a reasonable doubt that the defendant
16 personally and directly participated in the possession
17 or distribution of the drugs in question. With regard
18 to this type of proof, the government need not prove
19 that the defendant knew the type or amount of drugs in
20 question as long as the government proves beyond a
21 reasonable doubt that the defendant knew the drugs in
22 question were a controlled substance.

23 Second, the government can offer evidence that
24 proves beyond a reasonable doubt that the defendant knew
25 that the conspiracy involved a particular quantity of a

controlled substance or controlled substances during the time period that defendant participated in the conspiracy.

4 Third, the government can offer evidence that
5 proves beyond a reasonable doubt that the conspiracy
6 involved a particular quantity of controlled substance
7 or substances during the time period the defendant
8 participated in the conspiracy and that, based on all of
9 the circumstances, it was reasonably foreseeable to the
10 defendant that the conspiracy involved the particular
11 quantity.

With regard to each of these types of proof, the government must prove beyond a reasonable doubt that the conspiracy at issue is the one described in Count 1.

15 Remember, you should address this issue and
16 complete the form only if you find the essential
17 elements of the conspiracy alleged in Count 1 have been
18 established. If you decide that the government has
19 proven beyond a reasonable doubt that the charged
20 conspiracy involves 28 grams or more of cocaine base or
21 100 grams or more of heroin, then you are to indicate
22 that finding on the special verdict form.

BUYER-SELLER TRANSACTIONS

24 The fourth superseding indictment charges that the
25 defendant was a participant in a criminal conspiracy.

1 The defendant argues, alternatively, that the
2 transactions between him and others constituted a series
3 of buyer-seller transactions, in this case the buying
4 and selling of drugs. The existence of a simple
5 buyer-seller transaction between a defendant and another
6 person, without more, is not sufficient to establish a
7 conspiracy even where the buyer might intend to resell
8 the drugs. Moreover, contact with drug traffickers,
9 standing alone, is not sufficient to prove participation
10 in the conspiracy.

11 In considering whether a conspiracy or a series of
12 simple buyer-seller transactions existed with regard to
13 the defendant, you may consider the following factors
14 among others:

15 1. Whether the transaction involved large
16 quantities of drugs;

17 2. Whether the parties had a standardized way of
18 doing business;

19 3. Whether the sales were on credit or
20 consignment;

21 4. Whether the parties had a continuing
22 relationship;

23 5. Whether the seller had a financial stake in a
24 resale by the buyer;

25 6. Whether the parties had an understanding that

1 the drugs would be resold;

2 7. Whether the individual alleged to have
3 participated in the conspiracy purchased the same drugs
4 from others not involved in the alleged conspiracy;

5 8. Whether the parties placed limits on the
6 purchaser's ability to use or resell the product;

7 9. Whether the individual alleged to have
8 participated in the conspiracy did not assist the
9 conspiracy's operation aside from being a customer or
0 purchaser of drugs;

11 10. Whether the defendant's supplier of drugs also
12 sold to many different buyers.

13 All right.

14 COUNT 2

15 The fourth superseding indictment charges the
16 defendant with being a person previously convicted of a
17 felony who possessed a weapon shipped in interstate
18 commerce.

19 || The count reads as follows:

On or about December 25, 2015, in the District of Vermont, the defendant, Brian Folks, a/k/a Moe, a/k/a Moet Hart, having been convicted of a crime punishable by a term of imprisonment exceeding one year, knowingly possessed in and affecting commerce a firearm, namely a Beretta Model 92FS nine-millimeter pistol, SN BER441412.

1 ELEMENTS OF THE OFFENSE OF UNLAWFUL POSSESSION

2 OF A FIREARM, 18 USC, SECTION 922(g) (1)

3 In order to return a verdict of guilty as to this
4 count, the government must prove each of the following
5 elements beyond a reasonable doubt:

6 First, that the defendant was convicted in any
7 court of a crime punishable by imprisonment for a term
8 exceeding one year;

9 Second, that the defendant knowingly possessed the
10 firearm; and

11 Third, that the possession charged was in or
12 affecting interstate commerce.

13 FIRST ELEMENT - DEFENDANT'S PRIOR CONVICTION

14 The first element of the offense is that before the
15 date the defendant is charged with possessing the
16 firearm, the defendant had been convicted of a crime
17 punishable by imprisonment for a term exceeding one
18 year. The parties have stipulated and agreed that
19 defendant Brian Folks was convicted of a crime
20 punishable by a term of imprisonment exceeding one year
21 prior to December 25, 2015.

22 SECOND ELEMENT - POSSESSION OF FIREARM

23 The second element which the government must prove
24 beyond a reasonable doubt is that on or about the date
25 set forth in the indictment, the defendant knowingly

1 possessed a firearm.

2 A firearm is any weapon which will, or is designed
3 to, or may be readily converted to, expel a projectile
4 by the action of an explosive.

5 As I have instructed you, the government must prove
6 beyond a reasonable doubt that the defendant possessed
7 the firearm. The legal concept of possession may differ
8 from the everyday usage of the term, so I will explain
9 it in some detail.

10 Actual possession is what most of us think of as
11 possession; that is, having physical custody or control
12 of an object. For example, if you find that the
13 defendant had the firearm on his person, you may find
14 that he had possession of the firearm. However, a
15 person need not have physical custody of the object in
16 order to be in legal possession of it; this is called
17 constructive possession. If an individual has the
18 ability and intent to exercise substantial control over
19 an object that he does not have in his physical custody,
20 then he is in constructive possession of that item.

21 An example of this from everyday experience would
22 be a person's possession of items he keeps in the safe
23 deposit box of his bank. Although the person does not
24 have physical custody of those items, he exercises
25 substantial control over them and so has legal

1 possession of them.

2 If you find that the defendant had such control
3 over the firearm but did not actually have physical
4 custody of the firearm, then he possessed the firearm
5 under this element just as if he had the firearm in his
6 physical custody.

7 To satisfy this element, you must also find that
8 the defendant knowingly and possessed -- knowingly
9 possessed the firearm. This means that he possessed the
10 firearm purposely and voluntarily and not by accident or
11 mistake. It also means that he knew that the weapon was
12 a firearm as we commonly use the word. However, the
13 government is not required to prove that the defendant
14 knew that he was breaking the law.

15 THIRD ELEMENT - FIREARM IN OR AFFECTING COMMERCE

16 The third element that the government must prove
17 beyond a reasonable doubt is that the defendant -- is
18 that the firearm the defendant is charged with
19 possessing was in or affecting interstate commerce.

20 This means that the government must prove that at
21 some time prior to the defendant's possession, the
22 firearm had traveled in interstate commerce. It is
23 sufficient for the government to satisfy this element by
24 proving that at any time prior to the date charged in
25 the fourth superseding indictment, the firearm crossed a

1 state line. It is not necessary that the government
2 prove that the defendant himself carried it across a
3 state line, nor must the government prove who carried it
4 across or how it was transported. It is also not
5 necessary for the government to prove that the defendant
6 knew that the firearm had previously traveled in
7 interstate commerce.

8 In this regard, there has been evidence that the
9 firearm in question was manufactured in a different
10 state than the state where the defendant is charged with
11 possessing it. You are permitted to infer from this
12 fact that the firearm traveled in interstate commerce;
13 however, you are not required to do so.

14 COUNTS 3, 5, 8 AND 9

15 Counts 3, 5, 8 and 9 of the fourth superseding
16 indictment charge the defendant with knowingly and
17 intentionally distributing a controlled substance.
18 Title 21, Section 841(a) makes it a federal crime for
19 any person to knowingly or intentionally distribute
20 controlled substances.

21 The counts read as follows:

22 Count 3: On or about January 6th, 2016, in the
23 District of Vermont, the defendant, Brian Folks, a/k/a
24 Moe, a/k/a Moet Hart, knowingly and intentionally
25 distributed heroin, a Schedule I controlled substance.

1 Count 5: On or about January 12, 2016, in the
2 District of Vermont, the defendant, Brian Folks, a/k/a
3 Moe, a/k/a Moet Hart, knowingly and intentionally
4 distributed heroin, a Schedule I controlled substance.

5 Count 8: On or about January 22nd, 2016, in the
6 District of Vermont, the defendant, Brian Folks, a/k/a
7 Moe and a/k/a Moet Hart, knowingly and intentionally
8 distributed heroin, a Schedule I controlled substance.

9 Count 9: On or about February 10, 2016, in the
10 District of Vermont, the defendant, Brian Folks, a/k/a
11 Moe and a/k/a Moet Hart, knowingly and intentionally
12 distributed heroin, a Schedule I controlled substance.

13 ELEMENTS OF THE OFFENSE OF DISTRIBUTION OF
14 A CONTROLLED SUBSTANCE, 21 USC, SECTION 841(a)(1)

15 To sustain its burden of proof for the crime of
16 distribution of a controlled substance, the government
17 must prove the follow two elements beyond a reasonable
18 doubt:

19 First, that the defendant knowingly and
20 intentionally distributed a controlled substance, as
21 charged in the fourth superseding indictment; and

22 Second, that at the time of the distribution, the
23 defendant knew that the substance distributed was a
24 controlled substance.

25 I instruct you again that heroin, as charged in the

1 distribution counts of the fourth superseding
2 indictment, is a Schedule I controlled substance.

3 DEFINITION OF DISTRIBUTION

4 The word "distribute" means to deliver a controlled
5 substance. Deliver is defined as the actual,
6 constructive or attempted transfer of a controlled
7 substance. Simply stated, the word "distribute" means
8 to pass on, or to hand over to another, or to cause to
9 be passed on or handed over to another, or to try to
10 pass on or hand over to another, a controlled substance.

11 Distribution does not require a sale. Activities
12 in furtherance of the ultimate sale, such as vouching
13 for the quality of the drugs, negotiating for or
14 receiving the price, and supplying or delivering the
15 drugs in person or through another person may constitute
16 distribution. In short, distribution requires a
17 concrete involvement in the transfer of the drugs.

18 "KNOWINGLY" AND "INTENTIONALLY" DEFINED

19 With respect to Counts 3, 5, 8 and 9, you have been
20 instructed that in order to sustain its burden of proof,
21 the government must prove that the defendant acted
22 knowingly and intentionally. A person acts knowingly if
23 he acts intentionally and voluntarily and not because of
24 ignorance, mistake, accident or carelessness. You may
25 consider evidence of the defendant's words, acts, or

omissions, along with all other evidence, in deciding whether the defendant acted knowingly.

A person acts intentionally if he acts deliberately and purposefully and not because of mistake or accident.

KNOWLEDGE OF THE CONTROLLED SUBSTANCE

6 Although the government must prove that the
7 defendant knew that he possessed a controlled substance,
8 the government does not have to prove the defendant knew
9 the exact nature of the drugs he possessed. It is
10 enough that the government proves that the defendant
11 knew that he possessed some kind of controlled
12 substance.

13 Your decision about whether the defendant knew the
14 materials he distributed were a controlled substance
15 involves a decision about the defendant's state of mind.
16 It is obviously impossible to prove directly the
17 operation of a defendant's mind, but a consideration of
18 all the facts and circumstances shown by the evidence
19 and the exhibits in this case may enable you to infer
20 what the defendant's state of mind was. You may rely on
21 circumstantial evidence in determining the defendant's
22 state of mind.

COUNT 7

24 Count 7 of the fourth superseding indictment
25 charges Brian Folks with knowingly and intentionally

1 possessing heroin and cocaine base with the intent to
2 distribute these substances. Title 21, section 841
3 makes it a federal crime for any person to possess with
4 the intent to distribute controlled substances.

The count reads as follows:

On or about January 20, 2016, in the District of Vermont, the defendant, Brian Folks, a/k/a Moe, a/k/a Moet Hart, knowingly and intentionally possessed with the intent to distribute heroin, a Schedule I controlled substance, and cocaine base, a Schedule II controlled substance.

ELEMENTS OF THE OFFENSE OF POSSESSION

13 WITH THE INTENT TO DISTRIBUTE A CONTROLLED SUBSTANCE,

14 21 USC, SECTION 841(a)

In order to prove this charge against the defendant, the government must establish the following three elements of the crime:

18 First, that the defendant possessed a controlled
19 substance; here, heroin or cocaine base;

20 Second, that the defendant knew that he possessed a
21 controlled substance; and

Third, that the defendant possessed the controlled substance with the intent to distribute it.

I instruct you that heroin is a Schedule I controlled substance and cocaine base is a Schedule II

1 controlled substance.

2 DEFINITION OF "POSSESSION"

3 I have already instructed you as to the meaning of
4 possession when I instructed you on the law regarding
5 the possession of a firearm. The term has the same
6 meaning here.

7 KNOWLEDGE THAT THE DRUGS WERE CONTROLLED SUBSTANCES

8 The second element the government must prove beyond
9 a reasonable doubt is that the defendant knew that he
10 possessed a controlled substance.

11 To establish this element, the government must
12 prove that the defendant knew that he possessed a
13 controlled substance and that his possession was not due
14 to carelessness, negligence, or mistake. If you find
15 that the defendant did not know that he had controlled
16 substances in his possession or that he did not know
17 that what he possessed -- did not know that what he
18 possessed was, in fact, controlled substances, then you
19 must find the defendant not guilty.

20 Although the government must prove that the
21 defendant knew that he possessed controlled substances,
22 the government does not have to prove that the defendant
23 knew the exact nature of the drugs in his possession.
24 It is enough that the government proves that the
25 defendant knew that he possessed some kind of controlled

1 substances.

2 INTENT TO DISTRIBUTE

3 To satisfy the third element, the government may
4 prove that the defendant possessed controlled
5 substances --

6 To satisfy the third element, the government may
7 prove -- must prove that the defendant possessed
8 controlled substances with the intent to distribute
9 them. All right. So that's just a "may" to a "must."

10 To prove the third element in this way, the
11 government must prove beyond a reasonable doubt that the
12 defendant had control over the drugs with the state of
13 mind or purpose of transferring them to another person.

14 The same considerations that apply to your
15 determination of whether the defendant knew he possessed
16 controlled substances apply to your decision concerning
17 the defendant's intention to distribute them. You may
18 draw inferences from evidence concerning his behavior.
19 However, you may not convict the defendant on this count
20 unless these inferences convince you beyond a reasonable
21 doubt that the defendant intended to distribute the
22 controlled substances to others.

23 DEFINITION OF "DISTRIBUTION"

24 I have already instructed you as to the meaning of
25 the word "distribution" when I instructed you on the law

1 regarding the distribution of a controlled substance.

2 The term has the same meaning here.

All right. We have been going for about an hour.

4 Let's take about two minutes and stand and stretch.

5 (Brief pause.)

6 THE COURT: All right. Let's continue on.

7 COUNTS 10 THROUGH 14

Counts 10 through 14 of the fourth superseding
indictment charge Brian Folks with sex trafficking by
force, fraud or coercion.

11 The counts read as follows:

12 Count 10: Between in or about June 2012 and in or
13 about August of 2014, in the District of Vermont, the
14 defendant, Brian Folks, a/k/a Moe, a/k/a Moet Hart,
15 knowingly, in and affecting interstate commerce,
16 recruited, enticed, harbored, transported, provided,
17 obtained, and maintained by any means Katelynn C.,
18 knowing and in reckless disregard of the fact that
19 force, threats of force, fraud, and coercion would be
20 used to cause Katelynn C. to engage in a commercial sex
21 act.

22 Count 11: In or about July 2013, in the District
23 of Vermont, the defendant, Brian Folks, a/k/a Moe and
24 a/k/a Moet Hart, knowingly, in and affecting interstate
25 commerce, recruited, enticed, harbored, transported,

1 provided, obtained, and maintained by any means Keisha
2 W., knowing and in reckless disregard of the fact that
3 force, threats of force, fraud, and coercion would be
4 used to cause Keisha W. to engage in a commercial sex
5 act.

6 Count 12: Between in or about June 2015 and in or
7 about February of 2016, in the District of Vermont, the
8 defendant, Brian Folks, a/k/a Moe, a/k/a Moet Hart,
9 knowingly, in and affecting interstate commerce,
10 recruited, enticed, harbored, transported, provided,
11 obtained, and maintained by any means Keisha W., knowing
12 and in reckless disregard of the fact that force,
13 threats of force, fraud, and coercion would be used to
14 cause Keisha W. to engage in a commercial sex act.

15 Count 13: In or about June 2015, in the District
16 of Vermont, the defendant, Brian Folks, a/k/a Moe, a/k/a
17 Moet Hart, knowingly, in and affecting interstate
18 commerce, recruited, enticed, harbored, transported,
19 provided, obtained, and maintained by any means Danielle
20 M., knowing and in reckless disregard of the fact that
21 force, threats of force, fraud, and coercion would be
22 used to cause Danielle M. to engage in a commercial sex
23 act.

24 Count 14: Between in or about June 2015 and in or
25 about December of 2015, in the District of Vermont, the

1 defendant, Brian Folks, a/k/a Moe, a/k/a Moet Hart,
2 knowingly, in and affecting interstate commerce,
3 recruited, enticed, harbored, transported, provided,
4 obtained, and maintained by any means Ayla L., knowing
5 and in reckless disregard of the fact that force,
6 threats of force, fraud, and coercion would be used to
7 cause Ayla to -- Ayla L. to engage in a commercial sex
8 act.

ELEMENTS OF THE OFFENSE OF SEX TRAFFICKING

10 BY FORCE, FRAUD OR COERCION, 18 USC, SECTION 1591

11 In order to return a verdict of guilty as to Counts
12 10 through 14, the government must prove the following
13 elements beyond a reasonable doubt:

14 First, that the defendant knowingly recruited,
15 enticed, harbored, transported, provided, obtained, or
16 maintained by any means the person identified in each
17 count; and

18 Second, that the defendant did so knowingly and in
19 reckless disregard of the fact that force, threats of
20 force, fraud, or coercion, or any combination of those
21 means, would be used to cause that person to engage in a
22 commercial sex act; and

23 Third, that the defendant's conduct was in or
24 affected interstate commerce.

25 FIRST ELEMENT - RECRUITING, ENTICING,

1 HARBORING, TRANSPORTING, PROVIDING,

2 OBTAINING OR MAINTAINING A PERSON

3 The first element that the government must prove
4 beyond a reasonable doubt to establish the offense of
5 sex trafficking by force, fraud, or coercion is that the
6 defendant recruited, enticed, harbored, transported,
7 provided, obtained, or maintained the person identified
8 in each count. In considering whether the defendant did
9 any of these things, I instruct you to use the ordinary,
10 everyday definitions of these terms.

11 SECOND ELEMENT - KNOWLEDGE OR RECKLESS DISREGARD

12 THAT FORCE, FRAUD OR COERCION WOULD BE USED

13 The second element the government must prove beyond
14 a reasonable doubt to sustain the offense of sex
15 trafficking by force, fraud, or coercion is that the
16 defendant knew or recklessly disregarded the fact that
17 force, threats of force, fraud, or coercion or any
18 combination of those means would be used to cause the
19 person identified in each count to engage in a
20 commercial sex act.

21 The term "commercial sex act" means any sex act, on
22 account of which anything of value is given to or
23 received by any person. The thing of value may be
24 money, or it may be any other tangible or intangible
25 thing that has some value. The government does not have

1 to prove that a commercial sex act occurred, only that
2 the defendant knew or recklessly disregarded the fact
3 that force, threats of force, fraud, or coercion would
4 be used to cause a person to engage in a commercial sex
5 act.

6 "Force" means any form of power, violence or
7 physical pressure exercised upon another person.

8 "Fraud" means that the defendant knowingly made a
9 misstatement or omission of a material fact to entice
10 the victim. A material fact is one that would
11 reasonably be expected to be of concern to a reasonable
12 person in relying upon the representation or statement
13 in making the decision.

14 "Coercion" means a threat of serious harm or
15 physical restraint against a person or any scheme, plan
16 or pattern intended to cause a person to believe that
17 failure to perform an act would result in serious harm
18 or to a serious restraint against any person. A threat
19 is a serious statement expressing an intention to
20 inflict harm, at once or in the future, as distinguished
21 from idle or careless talk, exaggeration, or something
22 said in a joking manner.

23 The term "serious harm," which I just mentioned in
24 the definition of coercion, means any harm, whether
25 physical or nonphysical, including psychological,

1 financial or reputational harm, that is sufficiently
2 serious, under all the surrounding circumstances, to
3 compel a reasonable person of the same background and in
4 the same circumstances to perform or to continue
5 performing commercial sexual activity in order to avoid
6 incurring that harm.

7 "Reckless disregard" of a fact means a deliberate
8 indifference to the fact which, if considered in a
9 reasonable manner, indicates that there was a high
10 probability of the fact at issue.

11 In considering whether the defendant's actions
12 would cause a person to engage in a commercial sex act,
13 you may consider the cumulative effect of the
14 defendant's conduct on that person. In this regard, you
15 may consider, for example, any aspect of the person's
16 age, background, station in life, physical or mental
17 condition, experience, education, socioeconomic status,
18 or any inequalities between the person and the
19 defendant.

20 The government does not need to show a link between
21 any specific commercial sex act performed by the victim
22 and any particular threat made, or any particular action
23 or act of fraud or coercion taken against her. Rather,
24 it is sufficient if the defendant's actions give -- gave
25 rise to circumstances that would compel a reasonable

1 person in the victim's situation to comply with the
2 defendant's commands, in light of the totality of the
3 defendant's conduct, the surrounding circumstances, and
4 any vulnerabilities of the victim.

5 The government does not need to prove physical
6 restraint in order for you to find the defendant guilty
7 of sex trafficking by force, fraud, or coercion. A
8 person who has been placed in such fear or circumstances
9 is under no affirmative duty to try to escape.

10 In considering whether a person's commercial sex
11 acts were caused by force, fraud, or coercion, the fact
12 that the person may have initially consented or
13 acquiesced, or previously engaged in commercial sex
14 acts, does not mean that the person has not later --
15 does not mean that the person was not later compelled to
16 engage in a commercial sex act.

17 The question is whether the defendant used force,
18 fraud, or coercion, or any combination of those means,
19 to cause the person to perform or to continue to perform
20 commercial sex acts.

21 Whether the person was given money, benefits, or
22 gifts, or was able to keep any earnings, is not
23 determinative of whether that person had been compelled
24 through force, fraud or coercion to engage in a
25 commercial sex act.

1 THIRD ELEMENT - IN OR AFFECTING INTERSTATE COMMERCE

2 The third and final element the government must
3 prove beyond a reasonable doubt to establish the offense
4 of sex trafficking by force, fraud, or coercion is that
5 the defendant's conduct was in interstate commerce or
6 affected interstate commerce. The government does not
7 have to prove both.

8 "Interstate commerce" means the movement of goods,
9 services, money and individuals between two or more
10 states, territories, and possessions of the United
11 States, including the District of Columbia.

12 The government is not required to show that the
13 defendant's activities actually crossed state lines to
14 prove that his actions affected interstate commerce.
15 Rather, if the defendant's conduct involved the use of
16 goods that moved across state lines, or involved
17 telephones, the internet, or other such facilities of
18 interstate commerce, such as hotels that house
19 out-of-state travelers or are part of a national or
20 international chain, you may find that the acts affected
21 interstate commerce.

22 To satisfy this element, the government must prove
23 that the defendant's conduct was in or affected
24 interstate commerce in any way, no matter how minimal.
25 You do not have to find that the defendant's conduct

1 actually affected interstate commerce if you find that
2 the defendant's conduct would have affected interstate
3 commerce if the defendant had successfully and fully
4 completed his actions.

To show that the defendant's conduct affected interstate commerce, it is not necessary for the government to prove that the defendant specifically knew or intended that his conduct would affect interstate commerce. It is only necessary that the natural consequences of such conduct would be to affect interstate commerce in some way, even if minor.

12 COUNT 15

13 Count 15 of the fourth superseding indictment
14 charges Brian Folks with sex trafficking of a minor.

15 The count read as follows:

16 Between in or about May 17, 2013, and in or about
17 May 18, 2013, in the District of Vermont, the defendant,
18 Brian Folks, a/k/a Moe, a/k/a Moet Hart, knowingly, in
19 and affecting interstate commerce, recruited, enticed,
20 harbored, transported, provided, obtained, and
21 maintained by any means Hannah A., having had a
22 reasonable opportunity to observe Hannah A., that Hannah
23 A. had not attained the age of 18 years and, knowing or
24 in reckless disregard of the fact that Hannah A. would
25 be caused to engage in a commercial sex act.

1 ELEMENTS OF THE OFFENSE OF SEX TRAFFICKING

2 A MINOR, 18 USC, SECTION 1591

3 Title 18 of the United States Code, section 1591,
4 as charged in Count 15 of the fourth superseding
5 indictment, makes it a federal crime or offense for
6 anyone to knowingly, in and affecting interstate
7 commerce, recruit, entice, harbor, transport, provide,
8 obtain, or maintain by any means a person, having had a
9 reasonable opportunity to observe that person, and would
10 be caused to engage in a commercial sex act.

11 In order to return verdict of guilty as to this
12 count, the court *[sic]* must prove the following elements
13 beyond a reasonable doubt:

14 First, that the defendant knowingly recruited,
15 enticed, harbored, transported, provided, obtained, or
16 maintained by any means Hannah A;

17 Second, that Hannah A. was under the age of 18 and
18 that the defendant had a reasonable opportunity to
19 observe Hannah A.; and

20 Third, that the defendant knew or recklessly
21 disregarded the fact that Hannah A. would be caused to
22 engage in a commercial sex act; and

23 Fourth, that the defendant's conduct was in or
24 affecting interstate commerce.

25 FIRST ELEMENT - RECRUITING, ENTING, HARBORING,

TRANSPORTING, PROVIDING, OBTAINING, OR
MAINTAINING A PERSON

The first element that the government must prove beyond a reasonable doubt to establish the offense of sex trafficking of a minor is that the defendant recruited, enticed, harbored, transported, provided, obtained, or maintained the minor. As with Counts 10 through 14, you should use the ordinary, everyday definitions of these terms.

SECOND ELEMENT - REASONABLE OPPORTUNITY TO OBSERVE

The second element the government must prove beyond a reasonable doubt is to establish the offense of sex -- to establish the offense of sex trafficking of a minor is that Hannah A. was under the age of 18 and that the defendant had a reasonable opportunity to observe Hannah A.

THIRD ELEMENT - COMMERCIAL SEX ACT

The third element the government must prove beyond a reasonable doubt to establish the offense of sex trafficking of a minor is that the defendant knew or recklessly disregarded the fact that Hannah A. would be caused to engage in a commercial sex act.

I previously defined the term "commercial sex act" with respect to Counts 10 through 14.

You are to apply this definition as you consider

1 the evidence as to Count 15. It is not required that
2 Hannah A. actually performed a commercial sex act as
3 long as the government has proved that the defendant
4 recruited, enticed, harbored, provided, obtained, or
5 maintained her knowing, and in reckless disregard of the
6 fact, that she would be caused to engage in a commercial
7 sex act.

Unlike with respect to Counts 10 through 14, you do not need to find that force, threats of force, fraud, coercion -- or coercion were used or would be used to cause the victim in Count 15 to engage in a commercial sex act. Consent is not a defense to Count 15 because a minor cannot legally consent.

14 FOURTH ELEMENT - IN OR AFFECTING INTERSTATE COMMERCE

15 The fourth and final element that the government
16 must prove beyond a reasonable doubt is to establish the
17 offense of sex trafficking -- beyond a reasonable doubt
18 to establish the offense of sex trafficking of a minor
19 is that the defendant's conduct was either in interstate
20 commerce or affected interstate commerce. I previously
21 defined the terms "in interstate commerce" and
22 "affecting interstate commerce" with respect to Counts
23 10 through 14. You are to apply those definitions as
24 you consider the evidence as to Count 15.

25 COUNT 16

Count 16 of the fourth superseding indictment charges Brian Folks with using a facility in interstate commerce to -- in aid of prostitution.

4 The count reads as follows:

5 Between in or about June 2012 to -- and in or about
6 February of 2016, the defendant, Brian Folks, a/k/a Moe,
7 a/k/a Moet Hart, together with others, knowingly used,
8 and caused to be used, one or more facilities in
9 interstate commerce, namely the internet and cellular
10 telephones, with the intent to promote, manage,
11 establish, carry on, and facilitate the promotion,
12 management, establishment, and carrying on of an
13 unlawful activity, that is, a business enterprise
14 involving prostitution offenses in violation of the laws
15 of Vermont, and thereafter performed and caused to be
16 performed acts to promote, manage, establish, carry on,
17 and facilitate the promotion, management, establishment
18 and carrying on of such unlawful activity.

19 All right.

20 ELEMENTS OF THE OFFENSE OF USING A FACILITY
21 OF INTERSTATE COMMERCE IN AID OF PROSTITUTION,
22 18 USC, SECTION 1952

23 Title 18 of the United States Code, section 1952,
24 as charged in Count 16 of the fourth superseding
25 indictment, makes it a federal crime or offense for

1 anyone to use any facility in interstate commerce with
2 the intent to knowingly promote, manage, establish,
3 carry on, or facilitate the promotion, management,
4 establishment, or carrying on of any business enterprise
5 involving prostitution offenses in violation of the laws
6 of Vermont, and thereafter perform or attempt to perform
7 an act in furtherance of that unlawful activity.

8 In order to return a verdict of guilty as to this
9 count, the government must prove the following elements
10 beyond a reasonable doubt:

11 First, that the defendant used or caused to be used
12 any facility in interstate commerce;

13 Second, that the defendant's use of the facility in
14 interstate commerce was done with the intent to promote,
15 manage, establish, carry on or facilitate the promotion,
16 management, establishment, or carrying on of an unlawful
17 activity; and

18 Third, that after the use of the facility in
19 interstate commerce, the defendant performed or caused
20 to be performed an act in furtherance of this unlawful
21 activity.

22 **FIRST ELEMENT - FACILITY IN INTERSTATE COMMERCE**

23 The first element the government must prove beyond
24 a reasonable doubt to establish the offense of using a
25 facility in interstate commerce in aid of prostitution

1 is that the defendant used or caused to be used a
2 facility in interstate commerce.

3 A "facility in interstate commerce" means any
4 method of communication between one state and another,
5 for example, the internet or telephone.

6 The government need not prove that the defendant
7 knew that he was using a facility in interstate
8 commerce. Nor need the defendant *[sic]* prove that the
9 defendant intended to use a facility in interstate
10 commerce. All the government must prove with respect to
11 the first element is that the defendant did, in fact,
12 use a facility in interstate commerce.

13 SECOND ELEMENT - INTENTION TO PROMOTE, MANAGE,
14 ESTABLISH, OR CARRY ON AN UNLAWFUL ACTIVITY

15 The second element the government must prove beyond
16 a reasonable doubt to establish the offense of using a
17 facility in interstate commerce in aid of prostitution
18 is that the defendant used the facility in interstate
19 commerce with the intent to promote, manage, establish,
20 or carry on or facilitate the promotion, management,
21 establishment, or carrying on of an unlawful activity.

22 To satisfy this element, the government must prove
23 beyond a reasonable doubt that the defendant used the
24 facility in interstate commerce for the purpose of
25 facilitating the unlawful activity.

1 The unlawful activity the defendant is charged with
2 here is a business enterprise involving prostitution
3 offenses in violation of the laws of Vermont.

4 I now instruct you that under Title 13, section
5 2632 of the Vermont Statutes, it is unlawful for a
6 person to engage in prostitution or assignation or to
7 aid and abet prostitution or assignation by any means
8 whatsoever.

9 Under Vermont law, the term "prostitution" means
10 both the offering or receiving of the body for sexual
11 intercourse for hire. The term "assignation" means the
12 making of an appointment or engagement for prostitution
13 or lewdness.

14 In order to prove the second element of Count 16,
15 the government does not have to prove that the
16 furtherance of the unlawful activity was the defendant's
17 sole purpose in using an interstate facility. It is
18 sufficient if the government proves that one of the
19 defendant's reasons for using an interstate facility was
20 to further the unlawful activity, meaning to make the
21 unlawful activity easier or to facilitate it.

22 You are thus being asked to consider the
23 defendant's state of mind to determine his purpose in
24 using an interstate facility. You may determine the
25 defendant's intent from all the evidence that has been

1 placed before you, including the statements of the
2 defendant and his conduct before and after use of the
3 interstate facility.

4 The government must also prove that the unlawful
5 activity was a business enterprise. A business
6 enterprise is a continuous course of conduct or series
7 of transactions to make a profit, not a casual, sporadic
8 or isolated activity. If you find that the unlawful
9 activity was an isolated incident and was not part of
10 the ongoing course of criminal conduct, you must find
11 the defendant not guilty. The government must -- the
12 government does not have to show that the defendant
13 engaged in an unlawful activity for a particular length
14 of time. Nor must the government prove that the
15 unlawful activity was defendant's primary pursuit or
16 occupation, or that it actually turned a profit.

17 THIRD ELEMENT - ACT IN FURTHERANCE

18 OF THE UNLAWFUL ACTIVITY

19 The third element that the government must prove
20 beyond a reasonable doubt to establish the offense of
21 using a facility in interstate commerce in aid of
22 prostitution is that the defendant knowingly performed
23 or caused to be performed an act to promote, manage,
24 establish, carry on, or facilitate the promotion,
25 management, establishment, or carrying on of the

unlawful activity. The act in furtherance of the unlawful activity need not itself be illegal. However, you must find unanimously that this act came after the use of an interstate facility.

AIDING AND ABETTING

COUNTS 3, 5 AND 7 THROUGH 16

Counts 3, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16
of the fourth superseding indictment charge the
defendant both with committing the crime as a principal
and with aiding and abetting the offense.

The aiding and abetting statute, section 2(a) of Title 18 of the United States Code, provides that:

13 Whoever commits an offense against the United
14 States or aids, abets, counsels, commands, induces, or
15 procures its commission, is punishable as a principal.

16 I have already instructed you on the law regarding
17 the crimes as a principal. Now I will instruct you what
18 it means to aid and abet the same crimes.

AIDING AND ABETTING EXPLAINED

COUNTS 3, 5 AND 7 THROUGH 16

Under the aiding and abetting statute, it is not necessary for the government to show that a defendant himself physically committed the crimes with which he is charged in order for the government to sustain its burden of proof. A person who aids and abets another to

1 commit an offense is just as guilty of that offense as
2 if he had committed it himself.

3 Accordingly, you may find the defendant guilty of
4 the offense charged if you find beyond a reasonable
5 doubt that another person actually committed the offense
6 with which the defendant is charged and that the
7 defendant aided or abetted that person in the commission
8 of the offense.

9 As you can see, the first requirement is that you
10 find that another person has committed the crime
11 charged. Obviously no one can be convicted of aiding
12 and abetting criminal acts of another if no crime was
13 committed by the other person in the first place. But
14 if you do find that a crime was committed, then you must
15 consider whether the defendant aided or abetted the
16 commission of that crime.

17 In order to aid and -- or abet another to commit a
18 crime, it is necessary that the defendant knowingly
19 associate himself in some way with the crime and that he
20 participate in the crime by doing some act to help make
21 the crime succeed. To establish that the defendant
22 participated in the commission of the crime, the
23 government must prove that the defendant engaged in some
24 affirmative conduct or overt act for the specific
25 purpose of bringing about the crime.

1 The mere presence of a defendant where a crime is
2 being committed, even coupled with knowledge by the
3 defendant that a crime has been committed, or merely
4 associating with others who were committing a crime is
5 not sufficient to sustain aiding and abetting. One
6 has -- one who has no knowledge that a crime is being
7 committed or is about to be committed but inadvertently
8 does something that aids in the commission of that crime
9 is not an aider and abettor. An aider and abettor must
10 know that the crime is being committed and act in a way
11 which is intended to bring about the success of the
12 criminal venture. And that's aider and abettor.

13 To determine whether a defendant aided or abetted
14 the commission of a crime with which he is charged, ask
15 yourself these questions:

16 Did he participate in the crime charged as
17 something he wished to bring about?

18 Did he knowingly associate himself with the
19 criminal venture?

20 Did he seek by his actions to make the criminal
21 venture succeed?

22 If he did, then the defendant is an aider and
23 abettor and therefore guilty of the offense. If, on the
24 other hand, your answer to any of these questions is no,
25 then the defendant is not an aider and abettor, and you

1 must find him not guilty.

2 All right.

3 UNANIMOUS VERDICT REQUIRED

4 To return a verdict, it is necessary that every
5 juror agree to the verdict. In order to find the
6 defendant guilty, your verdict must be unanimous
7 regarding each essential element of the offense alleged
8 in each count. You should consider each count
9 separately and return a verdict on each count. Your
10 verdict may be different on various counts, but you
11 should not return a verdict on a particular count unless
12 your decision is unanimous.

13 During this trial --

14 JUROR NOTE-TAKING

15 During this trial, you have been provided with
16 pencil and paper, and some of you have taken notes. As
17 I explained at the beginning of the trial, all jurors
18 should be given equal attention during the deliberations
19 regardless of whether or not they have taken notes. Any
20 notes you have taken may only be used to refresh your
21 memory during deliberations. You may not use your notes
22 as authority to persuade your fellow jurors as to what a
23 witness did or did not say. In your deliberations, you
24 must rely upon your collective memory of the evidence in
25 deciding the facts of the case. If there is any

difference between your memory of the evidence and your notes, you may ask that the record of the proceedings be read back. If a difference still exists, the record must prevail over your notes.

CONCLUSION

I caution you, members of the jury, that you are here to determine whether the defendant before you today is not guilty or guilty solely from the evidence in this case. I remind you that the mere fact that a defendant has been indicted is not evidence against him. Also, a defendant is not on trial for any act or conduct or offense not alleged in the indictment. Nor are you called upon to return a verdict as to the guilt or innocence of any other person or persons not on trial as a defendant in this case.

16 You should -- you should not consider the
17 consequences of a guilty or not guilty determination.
18 The punishment provided by law for the offenses charged
19 in the indictment is a matter exclusively within the
20 responsibility of the judge, and it should never be
21 considered by a jury in any way in arriving at an
22 impartial verdict.

23 It is your duty as jurors to consult with one
24 another and to deliberate. Each of you must decide the
25 case for yourself, but only after an impartial

1 consideration of the evidence in the case with your
2 fellow jurors. Do not hesitate to reexamine your own
3 views and change your opinion if you think you were
4 wrong. Do not, however, surrender your honest
5 convictions about the case solely because of the opinion
6 of your fellow jurors or for the mere purpose of
7 returning a verdict.

8 Upon retiring to the jury room, your foreperson
9 will preside over your deliberations and will be your
10 spokesperson here in court. If a vote is to be taken,
11 your foreperson will ensure that it is done. A verdict
12 form has been prepared for your conclusions. If the
13 verdict form varies in any way from the instructions
14 provided within this jury charge, I instruct you that
15 you are to follow the instructions provided within this
16 jury charge.

17 After you have reached an agreement, the foreperson
18 will record a verdict of guilty or not guilty. Your
19 foreperson will then sign and date the verdict form, and
20 you will return to the courtroom. In all other
21 respects, the foreperson is the same as any other juror.
22 His or her vote does not count more than any other
23 member of the jury.

24 If, during your deliberations, you should desire to
25 communicate with the Court, please put your message or

1 question in writing signed by the foreperson and pass
2 the note to the court officer, who will bring it to my
3 attention. I will then confer with the attorneys, and I
4 will respond as promptly as possible, either in writing
5 or by having you return to the courtroom so I can speak
6 with you. I caution you, however, with regard to any
7 message or question you might send, that you should
8 never state or specify your numerical division at the
9 time. You should also never communicate the subject
10 matter of your note or your deliberations to any member
11 of the court's staff.

12 All right. First, let me excuse the alternates,
13 and I think, perhaps, the most difficult job is to be an
14 alternate because you have to engage in the trial for,
15 in this case, three weeks but then don't have the
16 opportunity to resolve the issue with the other jurors.
17 But the alternates are Alexander Boesch, Theodore
18 Francis and Melissa Coviello, the last three numbers.
19 And I am going to excuse you.

20 When the jury goes back to the jury room, you can
21 get your things and then leave, but I really want to
22 express my appreciation for your service. There was a
23 reasonable opportunity -- or reasonable risk that a
24 number of people would not be able to serve. Obviously
25 we had -- one juror left as well. And it's just

1 incredibly important that we have alternates in this
2 particular case.

3 So I thank you, with that, and once you are
4 excused, you are free to speak about the case, and --
5 all right.

6 And then, Ms. Murphy, I am going to appoint you as
7 the foreperson of the jury.

8 All right. I am going to turn the husher on and
9 I'd ask the lawyers to come forward.

10 (The following was held at the bench.)

11 THE COURT: Okay. So first, objections from
12 the government? Any objections?

13 MR GRADY: No objections, your Honor.

14 THE COURT: Okay.

15 MS. SEN: One objection to the count -- in the
16 charges of Counts 10 to 14, 15, the word "victim" is
17 used in one of the elements, and I didn't catch it
18 reading through.

19 THE COURT: Really?

20 MS. SEN: Yes.

21 THE COURT: Where is that?

22 MS. SEN: On page 30, your Honor, is the first
23 time it's said. Let me see here.

24 On page 30, the first full paragraph, "Rather, it's
25 sufficient the defendant's actions -- blah, blah, blah.

1 It's the last line in --

2 THE COURT: The first full paragraph?

3 MS. SEN: Yes, last sentence, and it's
4 actually the last phrase, "any vulnerabilities of the
5 victim."

6 LAW CLERK: It's actually in the first as
7 well.

8 MS. SEN: Oh, "by the victim." Yes, it's
9 actually in the first sentence.

10 THE COURT: Yeah, vulnerable -- okay.

11 MS. SEN: And then the same thing in the Count
12 15, your Honor. On page -- third element.

13 THE COURT: Okay. And where's that?

14 MS. SEN: On page 33, the last paragraph:
15 "Unlike with respect to Counts 10 through 14, you
16 don't -- you do not need to -- you do not need to find
17 that force, threats of force, fraud or coercion were
18 used or would be used to cause the victim" in Count 15.

19 THE COURT: All right. So what I am going to
20 do is ask for all of the instructions to be returned. I
21 am going to say that -- I am going to mention the
22 victim -- there is no victim. I am striking that. And
23 will be replaced with -- in this section?

24 MS. SEN: Person?

25 THE COURT: Yes. Do you have any objection to

1 me saying I am striking the word -- the words "victim"
2 in a couple of places and replacing it with "persons"?

3 MR. KAPLAN: Do I?

4 THE COURT: Yeah.

5 MR. KAPLAN: No. I agree with it.

6 MS. SEN: That's fine, your Honor.

7 MR. DARROW: Our only concern is that we don't
8 want to make it seem like the Court --

9 THE COURT: Pardon me?

10 MR. DARROW: My only concern is we don't want
11 the jury to think that the Court thinks that anyone's
12 not a victim either.

13 THE COURT: No, it --

14 MR. DARROW: You just say it's entirely for
15 the jury.

16 THE COURT: Just say return the forms and they
17 will get it back.

18 MR. DARROW: So no new instruction; just the
19 change.

20 THE COURT: I am just going to actually ask
21 them to turn to the charges; we are going to change it
22 and then give it back to them. I am going to say the
23 change -- changing the word "victim" to "person."
24 That's it.

25 Okay, is there anything else?

1 MS. SEN: Not that I can --
2 THE COURT: Sorry.
3 MS. SEN: -- find, your Honor.
4 THE COURT: Sorry about that.
5 MS. SEN: Well, I should have caught it.
6 THE COURT: Yeah. I should have caught it.

7 Okay.

8 MS. SEN: Thank you.

9 (The following was held in open court.)

10 THE COURT: All right. First, when you leave,
11 I'd ask that you leave the jury charge I read with me on
12 your seat. There's going to be one change. I am going
13 to change -- there's a couple of words -- "victim" to
14 "person." Again, "victim" to "person" is going to be
15 changed. That's it, but I want to change those. And
16 then you will get them back delivered pretty quickly.

17 Also, you will get a jury special verdict form
18 fairly quickly.

19 There's one other thing that I want to remind you:
20 Deliberate only when everyone is there. So if somebody
21 has to leave, whether they're going outside or whatever,
22 you should stop deliberations because everybody should
23 be deliberating at the same time.

24 So someone has to leave to go to the bathroom or
25 anything, I'd ask you to stop, wait for that person to

1 be back, then you continue your deliberations.

2 I am going to stay with counsel and excuse you now.
3 You are now to address the case of United States versus
4 Brian Folks. Okay.

5 (The jury was excused to deliberate upon their verdict,
6 after which the following was held in open court at 2:55
7 p.m.)

8 THE COURT: All right. Well, I apologize for
9 that error, but it's in the jury charge in such a way as
10 to not necessarily call these young women "victims."
11 Regardless, I am going to strike the word, have stricken
12 the word in their presence, replace it with "person,"
13 and then give them back their jury charge.

14 Next, the -- I have one other little change on the
15 special verdict form. I think -- this will be delivered
16 to you within just a few minutes. You can review it,
17 tell me if you want to make any changes to the special
18 verdict form. That would be helpful.

19 Okay. Is there anything else?

20 Okay. Then I will go relax.

21 (Court was in recess at 2:57 p.m.)

22 (The following was held in chambers at 4:35 p.m.)

23 THE COURT: We have everyone here.

24 The note reads, "Officer Brouillette testimony and
25 the Brian Folks video on January 20, 2016"--

1 MR. KAPLAN: You gotta be kidding me.

2 THE COURT: -- "stop." And it's signed by
3 Nancy Murphy.

4 "And Brian Folks' testimony on January 30, 2016,
5 stop."

6 MR. DARROW: January 30, 2016, stop.

7 THE COURT: Oh, the stop at -- the police stop
8 on Brouillette testimony.

9 MR. DARROW: So his testimony about the
10 January 20 stop.

11 THE COURT: And also what he said.

12 MR. DARROW: And what Folks said about the
13 January 20 stop.

14 THE COURT: Now, here's where we are going to
15 have a real problem.

16 COURT REPORTER: We don't, Judge.

17 THE COURT: Okay.

18 COURT REPORTER: Can we go off the record?

19 THE COURT: Yes.

20 (An off-the-record discussion was held.)

21 MR. DARROW: And we should go grab the laptop
22 with the video on it.

23 THE COURT: And we should be all set.

24 MR. DARROW: I will go do that.

25 THE COURT: Okay.

1 (Chambers conference concluded at 4:40 p.m.)

2 (The following was held in open court with the jury
3 present at 4:55 p.m.)

4 THE COURT: Okay. I have got a note from the
5 foreperson: "Officer Brouillette testimony and the
6 Brian Folks video on January 20, 2016, stop."

7 Is that what you would like?

8 JURY FOREPERSON: Yes.

9 THE COURT: You'd like the transcript of the
10 officer's testimony --

11 JURY FOREPERSON: Yes.

12 THE COURT: -- as well as the -- to play the
13 video?

14 JURY FOREPERSON: The video.

15 THE COURT: So, anyway. So what we have
16 prepared is the officer's testimony, which is going to
17 be a readback, and then we will also play the video.
18 Okay?

19 (The testimony of Kyle Brouillette from April
20 26, 2019, Trial Day 3, commencing at Page 212, Line 6,
21 through Page 225, Line 17, was read back by the court
22 reporter.)

23 THE COURT: All right. Now, the second
24 request is the video? And who's going to play the
25 video?

1 MR. DARROW: (Indicating.)

2 (A video recording was played in open court.)

3 THE COURT: All right. I think that's the
4 end. Is there a second video? I think --

5 MR. DARROW: We are not aware of the jury
6 asking for a second video.

7 JURY FOREPERSON: No.

8 THE COURT: No. Related to this particular --
9 on January 20th, it's only one, right?

10 MR. DARROW: No. I was confused, if possible,
11 that when we were in chambers, that there was a third
12 request on the note relating to a readback, and I just
13 ask the court reporter to check.

14 THE COURT: Well, maybe I should ask you
15 exactly what you mean by -- you have Officer Brouillette
16 testimony and the Brian Folks video of January 20th.

17 JURY FOREPERSON: Yes.

18 THE COURT: And then you sign it, and then you
19 have under that "Brian Folks' testimony on the January
20, 2016, stop."

21 JURY FOREPERSON: Okay, yes. Okay, I didn't
22 remember. That would have been when he was being --

23 THE COURT: That would be on the tape.

24 JURY FOREPERSON: No. That would be in his
25 testimony yesterday, if he --

1 THE COURT: Oh, all right. So that you are
2 asking for his testimony in regard to the January 20th
3 stop?

4 JURY FOREPERSON: Yes.

5 THE COURT: Okay. Well, we haven't gotten
6 that together.

7 JURY FOREPERSON: Okay.

8 THE COURT: So, you know, we will excuse you
9 at this point and try to locate that transcript. All
10 right?

11 Now it is 5:30. Ordinarily if you continue on, we
12 get you dinner, which is not great. It's pizza,
13 ordinarily, but -- at least I think it's pizza. Maybe
14 it's something else. But is that your wish to continue
15 on tonight, in which case we will get you dinner?

16 JURY FOREPERSON: Yes.

17 THE COURT: That's a yes?

18 Okay. And you want -- you want his testimony in
19 regard to the 20th?

20 JURY FOREPERSON: Yes.

21 THE COURT: Okay. All right. So we will
22 locate that. Okay.

23 (Court was in recess at 5:28 p.m.)

24 (The following was held in chambers at 6:46 p.m.)

25 THE COURT: This is a note that we got from

1 the jury:

2 "The jury would like to hear Brian Folks's
3 testimony pertaining to the December 25th, 2015, traffic
4 stop; the prosecution cross only."

5 Now, I happened to sit on a Ninth Circuit case in
6 which this very issue came up. The jury asked for one
7 side, not the other. That was found to be improper, and
8 you can't do that. So I have asked Anne to take a look
9 at what he may have testified to on direct examination
10 as well as cross examination in relationship to the gun,
11 the Durango or the stop, the December 25th stop, and she
12 has it all marked out.

13 Okay. I just thought I'd tell you that that's what
14 they said, and I have expanded that to both sides. You
15 agree with that or do you -- you think we should just
16 leave your cross in and not --

17 MR. DARROW: We defer to your judgment,
18 your Honor. I haven't read that Ninth Circuit case,
19 but --

20 THE COURT: Yeah, I don't think I wrote it,
21 but -- yeah, I remember it very clearly. Okay.

22 (Chambers conference concluded at 6:49 p.m.)

23 (The following was held in open court with the jury
24 present at 6:54 p.m.)

25 THE COURT: Okay. We received this note,

1 Exhibit B. "Jury would like to hear Brian Folks's
2 testimony pertaining to the December 25th, 2015, traffic
3 stop; the prosecution cross only."

4 Actually, the law is that whenever jurors bring up
5 testimony on a particular topic, it -- they have to be
6 read back, both sides, to be fair. And the reason for
7 that is that jurors could take things out of context, so
8 you need to get both sides.

9 So I have asked Anne to retrieve those things that
10 were said on direct examination by Mr. Folks and also
11 cross examination by Mr. Folks. And so you will hear
12 both.

13 I actually was sitting on a court of appeals in San
14 Francisco, and this issue came up, and we decided that
15 you have to show both, so I'll be following that rule
16 forever.

17 JURY FOREPERSON: Okay.

23 THE COURT: Okay. All right. That's what you
24 were asking for?

25 JURY FOREPERSON: Yes. Thank you.

1 THE COURT: Okay. Thank you.

2 (The jury was excused to further deliberate upon their
3 verdict and the court was in recess at 7:08 p.m.)

4 (The following was held in open court with the jury
5 present at 9:32 p.m.)

6 THE COURT: Okay?

7 COURTROOM DEPUTY: Madam Foreperson, has the
8 jury reached a verdict?

9 JURY FOREPERSON: Yes, we have.

10 (Brief pause.)

11 COURTROOM DEPUTY: In the case United States
12 of America versus Brian Folks:

13 As to Count 1, guilty.

14 The controlled substances that the government
15 proved beyond a reasonable doubt were involved with
16 respect to Brian Folks, meaning that Brian Folks
17 personally and directly possessed or distributed, that
18 he knew were possessed or distributed by other members
19 of the conspiracy, or were reasonably foreseeable to him
20 as part of the conspiracy:

21 Answer: Both heroin and cocaine base.

22 What amount of cocaine base did the government
23 prove beyond a reasonable doubt that Brian Folks
24 personally and directly possessed or distributed, knew
25 was possessed or distributed by himself or other members

1 of the conspiracy, or could have reasonably foreseen as
2 part of the conspiracy:

3 Answer: 28 grams or more.

4 The amount of heroin the government proved beyond a
5 reasonable doubt that Brian Folks personally or directly
6 possessed or distributed, knew was possessed or
7 distributed by himself and other members of the
8 conspiracy, or could have reasonably foreseen as part of
9 the conspiracy:

10 Answer: A hundred grams or more.

11 As to Count 2, not guilty.

12 As to Count 3, guilty.

13 As to Count 5, guilty.

14 As to Count 7, guilty.

15 As to Count 8, guilty.

16 As to Count 9, guilty.

17 As to Count 10, guilty.

18 As to Count 11, guilty.

19 As to Count 12, guilty.

20 As to Count 13, guilty.

21 As to Count 14, guilty.

22 As to Count 15, guilty.

23 As to Count 16, guilty.

24 Signed by the foreperson on this 9th day of May in
25 the year 2019.

1 So say you all, ladies and gentlemen?

2 (The jury all indicate assent with the verdict
3 as read.)

4 THE COURT: All right. Does either party wish
5 to have the jury polled?

6 MR. KAPLAN: Yes, your Honor.

7 THE COURT: Okay.

8 (The jury was individually polled as to their
9 verdict, and each juror indicated assent with the
10 verdict as read.)

11 THE COURT: Well, I want to express my
12 appreciation, the appreciation of everyone at the court
13 for your dedicated service. This was a very hard case.
14 It lasted three weeks. You were extraordinarily
15 attentive. We all started on time; we all finished on
16 time. And I was extraordinarily impressed with the
17 dedication in which you followed your responsibilities.

18 So, again, I really appreciate your service.
19 Oftentimes I go and speak with the jurors. At 10 -- or
20 9:30, I think probably you would all want to get on your
21 way. So I won't do that today, but I just really
22 appreciate it, and so thank you very much.

23 So you now are excused. I will stay on the bench
24 to speak with counsel.

25 (The jury was dismissed, after which the following was

1 held in open court at 9:38 p.m.)

2 THE COURT: All right. Do either counsel wish
3 to submit post-trial motions and memoranda?

4 MR. KAPLAN: Yes, we do, Judge.

5 THE COURT: How much time would you need?

6 MR. KAPLAN: Would 30 days from when the
7 transcript is completed to submit --

8 THE COURT: It was daily transcript, so do you
9 have it at this point or --

10 MR. KAPLAN: Well, we need -- I think we would
11 need the official transcript.

12 THE COURT: All right. But I need a fairly
13 firm date here, so --

14 MR. KAPLAN: Okay.

15 THE COURT: How about 45 days from today's
16 date?

17 (Brief pause.)

18 THE COURT: Okay. How about 60 days?

19 MR. KAPLAN: Thank you, Judge.

20 THE COURT: Okay.

21 MR. DARROW: Thirty days to respond?

22 THE COURT: All right. Thirty days to
23 respond.

24 Okay. I appreciate the way all counsel approached
25 this case. You really were respectful and very

talented. It was a pleasure to watch you try a case,
and so I really want to express my appreciation for
that.

I sometimes miss being a trial lawyer, but it helps
a lot to see good trial work. So thank you.

6 MR. DARROW: Thank you, your Honor.

7 MR. KAPLAN: Thank you, Judge.

8 (Concluded at 9:40 p.m.)

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C E R T I F I C A T I O N

14 I certify that the foregoing is a correct
transcript from the record of proceedings in the
15 above-entitled matter.

Anne Webster Pierce

June 13, 2019
Date

Anne Nichols Pierce